

A G E N D A

Regulatory Committee

Date: **Tuesday, 26th September, 2006**

Time: **2.00 p.m.**

Place: **The Council Chamber,
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 Committee

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

Councillors H. Bramer, Mrs. S.P.A. Daniels, G.W. Davis, D.J. Fleet,
J.W. Hope MBE, T.W. Hunt, G. Lucas, R. Preece and P.G. Turpin

	Pages
1. APOLOGIES FOR ABSENCE To receive apologies for absence.	
2. NAMED SUBSTITUTES (IF ANY) To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
3. DECLARATIONS OF INTEREST To receive any declarations of interest by Members in respect of items on the Agenda.	
4. MINUTES To approve and sign the Minutes of the meeting held on 9 th August, 2006.	1 - 4
5. THE GAMBLING ACT 2005 To receive a report from the Licensing Manager. Ward: County-wide	5 - 22
6. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH LW10 (PART) IN THE PARISH OF LLANWARNE To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath LW10 in the parish of Llanwarne. Ward Affected: Pontrilas	23 - 24

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| 7. | <p>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH BD8 (PART) IN THE PARISH OF BREDWARDINE</p> <p>To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath BD8 in the parish of Bredwardine</p> <p>Wards Affected: Golden Valley North</p> | 25 - 26 |
| 8. | <p>PROCEDURAL ARRANGEMENTS</p> <p>To note the procedural arrangements for the meeting in respect of Agenda Items 10 to 16.</p> <p>EXCLUSION OF THE PUBLIC AND PRESS
In the opinion of the Proper Officer, the following items will not be, or are likely not to be, open to the public and press at the time they are considered.</p> <p>RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below</p> | 27 - 28 |
| 9. | <p>PUBLIC RIGHTS OF WAY REVIEW OF CHARGES FOR PUBLIC PATH ORDERS</p> <p>To receive a report from the Rights of Way Manager.</p> <p>Ward: County-wide</p> | 29 - 38 |
| 10. | <p>DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE WHETHER AN APPLICANT IS A 'FIT AND PROPER PERSON' TO HOLD A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider an application for the renewal of a driver's licence.</p> | 39 - 44 |
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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Wednesday, 9th August, 2006 at 10.00 a.m.

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

Councillors: Mrs. S.P.A. Daniels, G.W. Davis, D.J. Fleet,
J.W. Hope MBE, T.W. Hunt and P.G. Turpin

In attendance: Councillors (none)

21. ASSISTANT RIGHTS OF WAY OFFICER

The Chairman welcomed Sian Barnes, Assistant Rights of Way Officer, to her first meeting.

22. COMMITTEE MEMBERSHIP

It was noted that Councillors Bramer and Lucas had been appointed as new members of the Committee but that there were still two vacancies upon it which would need to be determined by the Group Leaders.

The Chairman read out a letter of good wishes from Councillor R Preece who was no longer a member of the Committee.

23. APOLOGIES FOR ABSENCE

Apologies were received from Councillor G Lucas.

24. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes present at the meeting.

25. DECLARATIONS OF INTEREST

There were no declarations of interest made.

26. MINUTES

RESOLVED: That the Minutes of the meeting held on 4th July, 2006 be approved as a correct record and signed by the Chairman.

27. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH ESG 22 (PART) IN THE PARISH OF STRETTON GRANDISON

A report was presented by the Rights of Way Manager about an application for a Public Path Diversion Order to divert part of Footpath ESG22, Stretton Grandison, under the Highways Act 1980, Section 119. He advised that the application had been made to divert the footpath from the garden of the applicant's property, thereby making it more convenient for the applicant and those using the footpath. He said

that it was felt by the officers that the diversion met the tests set out in s.119 of the Highways Act in that it benefited the owner of the land crossed by the path and that it was not substantially less convenient to the public. The applicant had carried out the required pre-order consultation and the proposal had general agreement from the Parish Council, the Ramblers Association, the Open Spaces Society and the adjoining landowner. He felt that the application should therefore be granted.

Having considered all the facts in respect of the diversion, the Committee agreed with the course of action suggested by the Rights of Way manager.

RESOLVED:

That a public path diversion order is made in respect of footpath ESG22 in the parish of Stretton Grandison under section 119 of the Highways Act 1980

28. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH LV59 (PART) IN THE PARISH OF LLANVEYNOE

The Rights of Way Manager presented a report about an application for a Public Path Diversion Order to divert part of Footpath LV59, Llanveynoe, under the Highways Act 1980, Section 119. He advised that the application had been made to divert the footpath from the garden of the applicant's property, thereby making it more convenient for the applicant and those using the footpath. He said that it was felt by the officers that the diversion met the tests set out in s.119 of the Highways Act in that it benefited the owner of the land crossed by the path and that it was not substantially less convenient to the public. The applicant had carried out the required pre-order consultation and the proposal had general agreement from the Parish Council, the Ramblers Association, the Open Spaces Society and the adjoining landowner. He felt that the application should therefore be granted.

Having considered all the facts in respect of the diversion, the Committee agreed with the course of action suggested by the Rights of Way manager. The Committee also asked that the Rights of Way Manager to provide details of the costs involved in making Diversion Orders, at the next meeting.

RESOLVED:

- (a) that a public path diversion order is made in respect of footpath VV 59 in the parish of Llanveynoe under section 119 of the Highways Act 1980**
- (b) that the Rights of Way Manager provide details of the costs involved in making Diversion Orders at the next meeting.**

29. PROCEDURAL ARRANGEMENTS

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

30. PRIVATE HIRE VEHICLE CONDITIONS ATTACHED TO A SPECIALIST PRIVATE HIRE VEHICLE (FIRE ENGINE) LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing officer provided the Committee with the details of an application for the granting of a Private Hire Vehicle Licence in respect of a de-commissioned Fire Engine. The applicant wished to use the vehicle for events such as children's parties but under the Local Government (Miscellaneous Provisions) Act 1976 as a motor

vehicle constructed or adapted to seat fewer than nine passengers had to be licensed and governed by the appropriate reasonable conditions. She provided the Committee with a suggested list of conditions and outlined the alternatives which were available to it regarding the application.

Having considered all of the facts put forward by the Licensing Officer, the Committee decided that the licensed could be granted provided that those driving the vehicle obtained the appropriate operator and driver's licences and the addition of a condition requiring drivers of the vehicle to hold a HGV licence.

RESOLVED

That the application and conditions to be attached to a specialist Private Hire Vehicle in respect of a de-commissioned Fire Engine be approved, subject to the addition of a condition requiring drivers of the vehicle to hold a HGV licence.

The meeting ended at 10.30 a.m.

CHAIRMAN

5 NOTIFICATION OF THE DRAFT LICENSING STATEMENT OF PRINCIPLES POLICY AND CONSULTATION PROCESS FOR THE IMPLEMENTATION OF THE GAMBLING ACT 2005.

Report By: HEAD OF ENVIRONMENTAL HEALTH AND TRADING STANDARDS

Wards Affected:

County-wide

Purpose

1. To present to the committee the draft licensing statement of principles and outline the consultation process for the implementation of the Gambling Act 2005. (document attached)

Law

2. Section 349 of the Act requires all licensing authorities to prepare and publish a statement of the principles that they propose to apply in exercising their functions under the act during the three-year period to which the policy applies.
3. The statement of the principles licensing policy will last a maximum of three years but can be reviewed and revised by the authority at any time.
4. The Licensing Objectives under the Gambling Act 2005 are:
 - Preventing gambling being a source of crime or disorder
 - Ensuring that gambling is conducted in a fair and open way
 - Protecting children and the vulnerable from being harmed or exploited by gambling
5. The Local authorities will issue the following:
 - **Premises licenses** for:
 - Casinos
 - Betting offices and race tracks
 - Bingo clubs
 - Adult gaming centres
 - Family entertainment centres
 - **Permits** for:
 - Gaming machines in alcohol-licensed premises, such as pubs
 - Gaming machines for members clubs

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

- Gaming in members clubs
 - Unlicensed family entertainment centres
(Category D machines only - i.e. those that have the lowest level of stakes and prizes)
 - Prize gaming
- **Occasional and Temporary Use Notices**
 - **Provisional Statements**
 - **Small-Scale Lotteries Registrations**
6. The start of the transitional period where the local authorities will receive applications between 31 January 2006 and 27 April 2007. All existing operators who submit their advance applications by 27 April will benefit from continuation rights.
 7. Members training by legal on the Gambling Act is planned to commence in October 2006.

Consultation.

8. The Act requires that the licensing authority consult with the following on the statement of principals licensing policy or any subsequent revision.
 - The chief officer of police for the authorities area;
 - One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authorities area; and
 - One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this act.
9. The Councils Statement of principal's policy is required to be published by the means of the Website by 31 December 2006.
10. Consultation will take place by:-
 - Publishing Notices in the local press.
 - Writing to all premises licensed under the Licensing Act 2003.
 - Writing to all premises who currently hold Amusement with Prizes licences or Small Lottery Registrations.
 - All other businesses within Herefordshire that can be identified as requiring a licence e.t.c under the Gambling Act 2005.
 - Local or National organisations identified as having an interest in gambling.
 - Published on Herefordshire Councils Website.
 - Notifying Local members.
 - Writing to local organisations acting on behalf of young people and children.
11. The final statement of principal's policy will be brought back to the Regulatory Committee at the end of November 2006 for their considerations.

Recommendation

For the Regulatory Members to note the report and draft policy.

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



HEREFORDSHIRE
COUNCIL

DRAFT

Statement of Principles

Gambling Act 2005

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- (c) Function of Licensing Authorities
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- (d) Ensuring gambling is conducted in a fair and open way objective
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DRAFT

Part I

INTRODUCTION

(A) General

The Gambling Act 2005 (“the Act”) requires licensing authorities to publish a Statement of Principles which they propose to apply when exercising their functions under the Act. The Statement of Principles must be published at least every three years and should be reviewed from “time to time” and any amended parts will be the subject of re-consultation. The Statement of Principles will then be republished.

This Statement of Principles has been prepared in accordance with the provisions of the Gambling Act 2005 and the guidance issued to licensing authorities by the Gambling Commission under Section 25 of the Act. Its purpose is to set out the principles that the licensing authority proposes to apply in exercising its functions under the Act. Accordingly, it gives weight to the views of the consultees listed in the main body of the Statement. Herefordshire Council as the licensing authority must carry out its functions with a view to promoting the gambling objectives and as such, these objectives provide a framework for the Statement of Principles. Each application will be considered on its own individual merits. The licensing objectives are:

It should be noted that the Gambling Commission has stated “*the requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling*”.

Herefordshire Council is aware, in accordance with Section 153 of the Act, that in making decisions about premises licences and temporary use notices, it should aim to permit the use of premises for gambling insofar as it is:

- In accordance with any relevant Code of Practice issued by the Gambling Commission;
- In accordance with any relevant guidance issued by the Gambling Commission;
- Reasonably consistent with the licensing objectives; and
- In accordance with the Authority’s Statement of Principles

(B) Functions of the Gambling Commission

The Gambling Commission issues operator and personal licences to gambling operators and individuals who provide facilities for gambling. It also has responsibilities to regulate gaming machine manufacturers/suppliers and on line gaming operators. In undertaking its licensing responsibilities, the Gambling Commission is primarily concerned with the following areas in relation to gambling:

- Financial robustness (ensuring there are procedures concentrating on the protection of customer funds, cash handling and avoidance of money laundering).

- Protection of children and vulnerable persons – ensuring policy and procedures are in place concentrating on social responsibility, age and credit card verification, repetitive play and self exclusion.
- Fair and open play – ensuring gambling procedures comply with relevant legislation around fair gaming, games rules, voiding, late bets and maximum payouts
- Marketing – ensuring there is compliance with advertising codes of practices and rules around the provision of alcohol and gaming.
- Effective dispute resolution – ensuring operators keep records of complaints, disputes and have a dispute handling mechanism.
- Employers of gambling premises – covering issues around training, association between employees and customers, tipping and gambling by employees.
- The Gambling Commission shares enforcement responsibilities with the licensing authorities. It also issues guidance and codes of practice to which licensing authorities and operators must have regard.

(C) Licensing Authorities

Herefordshire Council is the licensing authority, its key functions include:

- Preparing a Statement of Principles for Gambling and reviewing it every three years.
- Deciding whether or not to permit new casino premises in their area.
- Monitoring and inspection of premises to ensure the conditions of the gambling premises licence are complied with.
- Ensuring applications are adequately consulted upon with Interested Parties and Responsible Authorities.
- Holding licensing committee hearings for applications that receive representations.
- Licensing of premises for gambling activities.
- Considering notices for the temporary use of premises for gambling and occasional use notices for betting at tracks.
- Granting various permits for low level gaming.
- Registering small society's lotteries.

(D) Key Terms And Definitions

“Licensing objectives”

- Preventing gambling from being source of crime or disorder; being associated with crime or disorder; or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way;
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

“Licensing Authorities”

A generic term given to the bodies that administer the licensing functions with a regard to a particular area. Herefordshire Council is the licensing authority for the County of Herefordshire. Unless explicitly stated, the term will relate to the licensing authority under the Gambling Act.

“Licensing Committee”

The Committee established under Section 6 of the Licensing Act 2003 in their capacity to determine premises licences under the Gambling Act 2005.

“Interested Party”

A person is an Interest Party in relation to an application for, or in respect of a premises licence, if in the opinion of the Licensing Authority, the person:

- (a) lives sufficiently close to the premises likely to be affected by the authorised activity;
- (b) has business interests that might be affected by the authorised activity; or
- (c) represents persons who satisfy (a) or (b).

“Guidance”

The guidance to the Licensing Authorities issued by the Gambling Commission.

“Statement of Principles”

The Statement of Principles required to be prepared under Section 349 of the Act (ie this Statement of Principles).

“Premises”

“Premises” means any place and includes a vehicle, vessel or moveable structure

“Responsible Authority”

“Responsible Authority” means for the purpose of the Gambling Act 2005 the following are Responsible Authorities in relation to premises

- (a) Herefordshire Council as Licensing Authority
- (b) Gambling Commission
- (c) Police
- (d) Hereford & Worcester Fire & Rescue Authority
- (e) Herefordshire Council (Planning Services Section)
- (f) Herefordshire Council (Environmental Health Section)
- (g) H M Revenues and Custom
- (h) [*Some pan-Council Authority that represents the safeguarding of children*]

Part II

HEREFORDSHIRE COUNCIL

(A) Background

Herefordshire Council is situated in an area which is co-terminus with the historic County of Herefordshire. Herefordshire Council is a unitary authority. The Council has an area of 217973 hectares with a population of 178,800 making it the second largest populated non-metropolitan unitary authority in England with the least population density of 0.82 persons per hectare (2004).

The county is mainly rural with an administrative headquarters in the Cathedral City of Hereford. There are five other principal market towns, being Leominster, Ross on Wye, Ledbury, Bromyard and Kington.

Herefordshire Council has consulted widely upon this Statement of Principles before finalisation and publishing. A list of those persons consulted is provided below. It should be noted that in addition, unsolicited comments were received from other persons, but these have not been listed.

The Gambling Act requires that the following parties are consulted by Licensing Authorities:

- (a) Chief Officer of Police for the area.
- (b) One or more persons who appear to the Authority represent interests of persons carrying on gambling businesses in the Authority's area.
- (c) One or more persons who appear to the Authority to represent interests who are likely to be affected by the exercise of the Authority's functions and the Gambling Act 2005.

The list of parties this Authority consulted are:

- Police
- Social Services
- [*stipulate a trade association*]
- [*stipulate the residents' associations and/or parish councils*]

The consultation took place between [*insert date*] and [*insert date*], following the revised Code of Practice and the Cabinet Office Guidance and consultations by the public sector.

The policy was approved at a meeting of the full Council on [*insert date*] and was published via the Council's website.

Copies have been placed in public libraries as well as being available at the Council's administrative headquarters at Brockington, 35 Hafod Road, Hereford, HR1 1SH.

It should be noted that this Statement of Principles will not override the right of any person to make an application, make representations about an application or apply for a review of a licence, as each will be considered on its own merits and in accordance with the statutory requirements of the Gambling Act 2005.

Herefordshire Council declares that it has had regard to the licensing objectives to the Gambling Act 2005, the guidance issued by the Gambling Commission and any responses from those consulted in the making of this policy statement.

(B) Exchange of Information

Licensing Authorities are required to include the principles to be applied by the Authority in exercising the functions under Sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission and the functions under Section 350 of the Act with respect of the exchange of information between it and persons listed in Schedule 6 of the Act.

The principle that Herefordshire Council applies is that it will act in accordance with the provisions of the Gambling Act 2005 and its exchange of information which includes the provision that the Data Protection Act 1998 will not be contravened. The Licensing Authority will also have regard to any guidance issued by the Gambling Commission to local authorities on this matter when it is published, as well as any relevant regulations issued by the Secretary of State under the powers provided by the Gambling Act 2005.

Should it be that any protocols are established with regard to information exchange with other bodies, then they will be made available.

(C) Enforcement

Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

This licensing authority's principles are that:

It will be guided by the Gambling Commission's Guidance for local authorities will endeavour to be:

- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and

- Targeted: regulation should be focused on the problem, and minimise side effects.

In accordance with the Gambling Commission's Guidance for local authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

This licensing authority will also, as recommended by the Gambling Commission's Guidance for local authorities, adopt a risk-based inspection programme. Whilst the Gambling Commission's Guidance suggests that the criteria the authority will utilise in this respect are included in this statement, this has not been possible. At the time of writing the Gambling Commission has not published its risk criteria, nor are regulations such as mandatory / default conditions published, nor Codes of Practice. LACORS is working with the Gambling Commission to produce a risk model for premises licences and this authority will consider that model once it is made available.

The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 will be to ensure compliance with the premises licences and other permissions which it authorises. The Gambling Commission will be the enforcement body for the operating and personal licences. It is also worth noting that concerns about manufacture, supply or repair of gaming machines will not be dealt with by the licensing authority but will be notified to the Gambling Commission.

This licensing authority will also keep itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

Bearing in mind the principle of transparency, this licensing authority's enforcement/compliance protocols/written agreements will be available upon request to the licensing section unit 10 Blackfriars street, Hereford, HR4 9HS, 01432260105 or by e-mailing the service on licensing@herefordshire.gov.uk At. Our risk methodology will also be available upon request.

[A paragraph needs to be inserted depending whether or not the Council is going to pass a resolution that there be no casinos; make no resolution whether there should or should not be casinos; make a resolution that there should be a casino]

PART III

LICENSING OBJECTIVES

PREMISES LICENCES

(A) Background

The first part of this section discusses the licensing objectives and some of the matters that the Herefordshire Licensing Authority may consider when determining applications. The second part discusses conditions and the Herefordshire Licensing Authority's approach to attaching conditions. This section should be read in conjunction with guidance issued by the Herefordshire Licensing Authority on making applications for licences.

When considering the matters in this section, the Herefordshire Licensing Authority will have regard to any guidance or codes of conduct issued by the Secretary of State and/or the Gambling Commission which may relate to a specific premises or category of premises.

Details of these requirements or matters relating to specific premises or categories of premises will be provided in applications procedures/information documents available on the Herefordshire Website www.herefordshire.gov.uk/licensing

In the interests of good practice, the Herefordshire Licensing Authority will expect applicants to offer their own measures to meet the licensing objectives. Accordingly, the matters outlined in this section provide a non-exhaustive indication of what the Herefordshire Licensing Authority will be particularly concerned with in order to promote the licensing objectives.

The Herefordshire Licensing Authority will always treat each case on its own individual merits and when considering whether specific measures are required to promote the licensing objectives, will balance its considerations against the overall principle of aiming to permit the use of premises for gambling.

Where the applicant can show how they might overcome the licensing objective concerns, this will be taken into account.

(B) Crime and Disorder Objective

The Gambling Commission will play a lead role in preventing gambling from being a source of crime. It will maintain rigorous licensing procedures that aim to prevent criminals from providing facilities for gambling, or being associated with providing such facilities. The Gambling Commission have powers to investigate the suitability of applicants for operating and personal licences, and others relevant to the application.

Where a representation is made under the crime and disorder objective, the Herefordshire Licensing Authority will consider whether conditions are

required to ensure that the objective is promoted. In determining appropriate conditions, the Herefordshire Licensing Authority may consider the following:

- The design, layout or the look and feel of the premises – paying particular regard to steps taken to ‘design out crime’.
- Steps taken to address the reoccurrence of any historical crime and disorder issues.
- Any relevant council strategies that relate (or have aspects relating) to crime and disorder.
- Training given to staff around crime prevention measures appropriate to the premises.
- The physical security features installed in the premises. This may include matters such as the position of cash registers or the standard of CCTV that is installed.
- Where premises are subject to age restrictions what procedures or measure are in place to conduct age verification checks, supervised entrances/age restricted machines, whether there is physical separation of areas etc.
- Whether the premises has door supervisors or security, and/or
- The likelihood of any violence, public disorder or policing problem if the licence is granted.

The above list is not exhaustive and merely indicative of types of issues around crime and disorder the Herefordshire Licensing Authority may consider.

The Herefordshire Licensing Authority is aware of the distinction between disorder and nuisance. In delineating the two, it will consider factors such as whether police assistance was required and how threatening the behaviour was to those who witnessed it.

The Guidance provides that Licensing Authorities may not consider issues in relation to nuisance or public safety when determining applications for premises licences and that these matters must be addressed through other legislation. Where a nuisance or public safety issue is raised, the Herefordshire Licensing Authority will ensure that the concern is referred to the relevant statutory authority to ensure that the matter is addressed under the appropriate legislation/enforcement regime.

(C) Protection of Children and Vulnerable People Objective

This licensing objective will be explained in two sections - Children and Vulnerable people.

Children

The Herefordshire Licensing Authority notes the Gambling Commission’s Guidance states that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children).

We will consider, as suggested in the Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. For

example, appropriate measures may include supervision of entrances / machines, segregation of areas etc.

The Herefordshire Licensing Authority will also ensure that where category C or above machines are on offer in premises to which children are admitted:

- All such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance.
- The premises is appropriately signed, indicating that access to that area is restricted to persons under the age of 18
- Only adults are admitted to the area where the machines are located
- Access to the area where the machines are located is supervised
- The area where the machines are located is arranged so that it can be observed by the staff or the licence holder.

These considerations will apply to premises including buildings where multiple premises licences are applicable. **Note:** Separate requirements apply to Alcohol Licensed Premises with category C gaming machines permissions; refer to Herefordshire's Statement of Principles on Permits, available on the Herefordshire Website www.herefordshire.gov.uk/licensing.

In determining applications in relation to the above objective, the Herefordshire Licensing Authority may consider the proximity of the gambling premises to schools and / or areas where there may be a high concentration of children and/or families.

Vulnerable Persons

The Herefordshire Licensing Authority does not seek to stop particular groups of adults from gambling in the same way that it seeks to stop children, but it will assume for regulatory purposes, that 'vulnerable persons' include:

- people who gamble more than they want to
- people who gamble beyond their means; and
- people who may not be able to make an informed or balanced decision about gambling due to a mental impairment, alcohol or drugs.

The Herefordshire Licensing Authority will pay particular attention to licence applications for premises near:

- schools
- where gamblers anonymous groups (or similar) meet.

(D) Ensuring Gambling is Conducted in a Fair and Open Way Objective

The Guidance states 'Generally the Commission would not expect Licensing Authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be a matter for either the management of the of the gambling business, and therefore subject to the operating licence, or will be in relation to the suitability and actions of an individual and therefore subject to the personal licence.

In the case of a race track conditions might be imposed on a premises licence requiring the track operator to ensure that the rules are prominently displayed in or near to betting areas or that other measures are taken to ensure that they are made available to the public (for example being printed on the race card or made available in a leaflet from the track office). It will also fall to Licensing Authority to decide whether, where category D machines and/or equal chance prize gaming without a permit is to be made available for use at traveling fairs that the statutory requirement for gambling amount to no more than ancillary amusement at the fair is met. The Licensing Authority will also consider whether the applicant falls within the statutory definition of a traveling fair.

Generally the Herefordshire Licensing Authority will not need to concern itself with the suitability of a person applying for a premises licence as that person will have to hold an operating licence from the Gambling Commission. Where concerns about a person's suitability or business practices arise the Herefordshire Licensing Authority will bring this to the attention of the Gambling Commission.

(E) Conditions

Conditions attached to Premises Licences by the Herefordshire Licensing Authority will be proportionate and will be:

relevant to the need to make the proposed building suitable as a gambling facility
directly related to the premises and type of licence applied for
fairly and reasonably related to the scale and type of premises reasonable in all other respects.

Appropriate measures / licence conditions may cover issues such as:

proof of age schemes
CCTV
supervision of entrances / machine areas
physical separation of areas
location of entry to the premises (matters detailed in the Guidance)
notices / signage about under 18's not entering the premises
opening hours
self barring schemes; and/or
provision of information leaflets / helpline number of gambling self help organisations.

This list is not mandatory or exhaustive and merely indicative of example measures.

The Herefordshire Licensing Authority will aim to not duplicate conditions that are attached to a premises licence by the Gambling Act, Gambling Commission or Secretary of State (unless they are default conditions which may be substituted accordingly) or conditions attached to an operators or personal licence.

Conditions on buildings with multiple licences

The Herefordshire Licensing Authority will consider specific measures that may be required for buildings that have multiple licences. Such measures may include:

- the supervision of entrances
- segregation of gambling from non-gambling areas frequented by children; and/or
- the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives.

Betting machines

Holders of a betting premises licence are permitted (subject to the Local Authority discretion) to have betting machines. A betting machine is different from a gaming machine as it is designed or adapted for use to bet on real events. For example, some premises may have betting machines that accept bets on live events, such as horse racing as a substitute for placing a bet in person over the counter.

Licensing Authorities have powers to restrict the number of betting machines in certain premises. In determining the number of betting machines, the Herefordshire Licensing Authority will consider the nature of the machine and the circumstances with which they are made available. This may include:

- the size of the premises
- the number of counter positions available for counter-to-counter transactions; and/or
- the number of staff to monitor the use of the machines by children and young persons or vulnerable people.

Matters that Licensing Authorities May Not Consider

The Gambling Act and Guidance provides a number of matters that licensing authorities may not consider. These include:

- Moral objections – A Licensing Authority's decision cannot be based on dislike of gambling, or a general notion that it is undesirable to allow gambling premises in an area.
- Planning – When determining an application, regard cannot, under the terms of the Gambling Act, be given to planning or building control permissions and/or any planning restrictions, refer to paragraphs 80 to 81.
- Demand – Licensing Authorities must not take into account issues around the demand for gambling premises.

Conditions that the Licensing Authority May Not Attach to Licences

The Guidance provides a number of conditions which licensing authorities may not attach to premises licences. These are:

- Any condition on a premises licence which makes it impossible to comply with an operating licence condition.
- Conditions relating to gaming machines categories, numbers, or method of operation.

- Conditions which provide that membership of a club or body be required.
- Conditions in relation to stakes, fees, winnings or prizes; and
- A condition requiring door supervisors at casinos and bingo premises licensed under the Gambling Act to be Security Industry Authority (SIA) licensed.

(f) Links to Other Policies

This section identifies related strategies and sets out how the Herefordshire Licensing Authority will integrate its licensing functions with these strategies.

Enforcement

The Herefordshire Licensing Authority will be responsible for ensuring compliance with premises licences and other permissions such as notices and permits. The Gambling Commission will be the enforcement body for Operator and Personal licences, which also includes concerns around supply, manufacture and repair of gaming machines and online gaming.

The Herefordshire Licensing Authority will have regard to any guidance issued by the Gambling Commission on enforcement. Where no specific guidance exists the Herefordshire Licensing Authority will follow the principles on enforcement provided by the Better Regulation Executive and Hampton Review of regulatory inspections and enforcement. Overall, these provide that a regulator will be:

- Proportionate - intervene where necessary and where remedies are taken these will be appropriate to the risk posed and costs identified and minimised.
- Accountable – be able to justify decisions and be open to public scrutiny.
- Consistent – have rules and standards which are joined up and implemented fairly.
- Transparent – keep regulation simple, open and user friendly.
- Targeted - remain focused on the problem and minimise the side effects.

The Herefordshire Licensing Authority will adopt a risk-based enforcement programme. This means we will endeavour to target high-risk premises, which require greater attention, whilst operating a 'light touch' enforcement for those low risk premises who require less attention.

While the Guidance suggests that the criteria the licensing authority will use to risk rate premises is included in this policy, this has not been possible. At the time of writing the Gambling Commission has not published its risk criteria, nor are regulations such as mandatory / default conditions published, nor Codes of Practice. This section will be amended once the relevant information is made available.

Further detail regarding Herefordshire's approach to enforcement under the Gambling Act are detailed in Herefordshire's Gambling Act Enforcement Policy. Our enforcement policy is developed in accordance with the principles of the Regulatory Compliance Code.

In exercising enforcement functions under the Gambling Act, the Herefordshire Licensing Authority will endeavour to avoid duplication with other regulatory regimes as far as possible.

Reviews

A premises licence may be reviewed by the Herefordshire Licensing Authority of its own volition or following the receipt of an application for a review. Applications for review may be made by Interested Parties or Responsible Authorities.

Whether a review is granted will be on the basis of whether the issues raised in the application for review:

- are substantially the same as previous representations or requests for review
- are in accordance with any relevant code of practice or guidance issued by the Gambling Commission
- are in accordance with any relevant guidance issued by the Gambling Commission
- are reasonably consistent with the Licensing Objectives; and/or
- are in accordance with this policy.

The Herefordshire Licensing Authority will also consider whether the request for a review is frivolous, vexatious, will certainly not cause the Herefordshire Licensing Authority to alter/revoke/suspend the licence or whether the request is substantially the same as previous representations or requests for review i.e. it is repetitive.

Further guidance regarding the reviews process is available on the Herefordshire Website www.herefordshire.gov.uk/licensing

Planning Policies

When determining an application, the Herefordshire Licensing Authority cannot take into account the likelihood of the applicant obtaining planning permission, listed building consent or building regulations approval. However, applications for permanent premises (or variations to permanent premises) should normally be made where the operator already has the appropriate planning permissions and consents for the property concerned.

Although not part of this policy, applicants are reminded that there are various borough wide and area based planning guidance and strategies which may be relevant to the non-licensing components of any proposal. These include:

- The Town and Country Planning Act (1990) as amended
- Town and Country Planning (Use Classes) Order 1987 and subsequent amendments
- The Unitary Development Plan
- Food, Drink and Entertainment in Herefordshire Town

Crime and Disorder Policies

This Gambling Policy has been written having regard to the Safer Herefordshire Strategy 2005-08. In supporting the aims of the strategy, the Herefordshire Licensing Authority will work in partnership with the police and other responsible authorities to ensure that crime and disorder issues around gambling premises are tackled effectively. This includes expanding the work of the Licensing Tasking Meeting to include a fortnightly examination of crime and disorder statistics around Gambling Premises and the taskings of the appropriate agencies to deal with identified issues where appropriate.

Further information about the Safer Herefordshire Strategy can be found at [insert website address]

Policies about Children and Young Persons

The Herefordshire Licensing Authority will look to the Herefordshire Safeguarding Children Board to advise on issues around Protection of Children from Harm. Herefordshire's strategy around children and young people are found in the Herefordshire's Children and Young People's Plan 2006-2009. This plan underpins the functions of the Herefordshire Safeguarding Children Board to ensure young people and children achieve their full potential.

DRAFT

6 HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH LW10 (PART) IN THE PARISH OF LLANWARNE

Report By: Public Rights of Way Manager

Wards Affected:

Pontrilas

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath LW10 in the parish of Llanwarne.

Considerations

- 1 The application was made in September 2002, by Mr. R. Spragg, who is the landowner. The reasons for which were to improve land management, regularise common usage and to improve walker's views of the surrounding countryside.
- 2 The application is one of four that is being progressed as part of a pilot project to test the new diversion procedures recently approved (subject to legal services confirmation) by the Cabinet Member for Policy and Community. The applicant has carried out all pre order consultation and the proposal has general agreement from the Parish Council.
- 3 Both the Ramblers Association and the Open Spaces Society submitted objections to the proposal (appendix 1 and 2). Their objections are that it would reduce the openness of the footpath and that it is longer.
- 4 Following a site visit by the Rights of Way Manager it was felt that the proposal would increase the maintenance burden on the council, increase the likelihood of the route being enclosed by a fence and require more maintenance by the landowner which could become neglected.
- 5 On the 30th August 2006 the applicant was advised that the recommendation of the Rights of Way Manager, to the Council's Regulatory Committee, would be for an order not to be made. The reasons for that recommendation were set out in a letter (appendix 3). The landowner has made no representation since that time.
- 6 The Local Member, Cllr Godfrey Davies supports the application
- 7 The proposed diversion does not meet the specified criteria as set out in section 119 of the Highways Act 1980 in that:

- The proposal is substantially less convenient to the public.

It does however meet the other specified criteria in section in that:

- The proposal benefits the landowner
- The proposal does not alter the points of termination of the path.

Alternative Options

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

Risk Management

There is a risk that the Order will be opposed, as has been indicated by the Ramblers Association and the Open spaces Society, leading to additional demand on existing staff resources.

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Local Member - Councillor Godfrey Davies
- Llanwarne Parish Council.

Recommendation

That a public path diversion order is not made under Section 119 of the Highways Act 1980, as illustrated on the attached plan (appendix 4) and that the application is rejected.

Appendices

Letter of Objection from Ramblers Association dated 16th March 2006

Letter of Objection from Open Spaces Society dated 18th March 2006

Letter from Public Rights of Way Manager dated 30th August 2006

Plan outlining proposal

7 HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH BD8 (PART) IN THE PARISH OF BREDWARDINE

Report By: Public Rights of Way Manager

Wards Affected:

Golden Valley North

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath BD8 in the parish of Bredwardine.

Considerations

- 1 The application was made on 12th October 1996, by Mr Samuel Bowen (who is the landowner.) The reasons for the application were to move the footpath out of the farmyard, bypassing the house and farm buildings-one of which had been built across the footpath. The applicant felt that this would increase both his privacy and user safety, as animals are being kept in the farmyard.
- 2 The Public Rights of Way department has carried out pre-order consultation in April 2002. The proposal has general agreement from the Open Spaces Society, the Ramblers Association and the Byways and Bridleways Trust. This is subject to a minimum width of 2 metres, installation of furniture to cross fence lines (at B and C) and adequate waymarking. They have also noted that the landowner should avoid damaging the surface, which can become muddy. The Byways and Bridleways Trust have noted that any furniture installed at point B must not prevent usage of the bridleway BD7, which is joined by footpath BD8 at this point. There are no other affected landowners.
- 3 No comments have been received from the Parish Council.
- 4 The Local Member was consulted on 24th August 2006 and supports the application.
- 5 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order.
- 6 The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in that:
 - The proposal benefits the owner of the land crossed by the existing path.
 - The proposal does not alter the point of termination of the paths.
 - The proposal is not substantially less convenient to the public.

Alternative Options

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

Risk Management

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

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Local Member – Mr N Davies
- Wyeside Group Parish Council.
- Statutory Undertakers

Recommendation

That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D236/52-8

Appendices

Order Plan, drawing number: D236/52-8

REGULATORY COMMITTEE
LICENSING APPEAL PROCEDURE

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

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