

A G E N D A

Regulatory Committee

Date: **Tuesday, 30th January, 2007**

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:

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

e-mail: pmartens@herefordshire.gov.uk

**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Regulatory Committee

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

Councillors 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 28th November, 2006. | 1 - 8 |
| 5. HIGHWAYS ACT 1980, SECTION 119, PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH LW4 (PART) IN THE PARISH OF LLANWARNE To re - consider an application under the Highways act 1980, section 119, to make a public path diversion order to divert part of footpath LW4 in the parish of Llanwarne. Wards Affected Pontrilas | 9 - 12 |
| 6. HIGHWAYS ACT 1980, SECTION 119, PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH LV46 GOLDEN VALLEY SOUTH (PART) IN THE PARISH OF LLANVEYNOE To re - consider an application under the Highways act 1980, section 119, to make a public path diversion order to divert part of footpath LV46 in the parish of Llanveynoe. Wards Affected Golden Valley South | 13 - 14 |

7. **APPLICATION FOR AN AMUSEMENT WITH PRIZES MACHINES PERMIT FOR OVER TWO MACHINES - SECTION 34 THE GAMING ACT 1968** 15 - 34

To consider an application for an Amusements with prizes permit for three gaming machines at the Grandstand, Grandstand Road, Hereford HR4 9NH

Wards Affected: Three Elms

8. **PROCEDURAL ARRANGEMENTS** 35 - 36

To note the procedural arrangements for the meeting.

9. **HACKNEY CARRIAGE AND PRIVATE HIRE REQUEST FROM JOHN WHEADON (CITY TAXIS) TO DEVIATE FROM STANDARD CONDITION 1.1 (NEW HACKNEY VEHICLE LICENCE). TOWN POLICE CLAUSES ACT LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976** 37 - 38

To consider the report of the Head of Environmental Health and Trading standards about a request from a proprietor to allow three saloon cars with wheelchair friendly swivel front passenger seats to be licensed as Hackney Carriages, contrary to condition number 1.1 in the vehicle licence conditions

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.

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

10. **APPLICATION FOR DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976** 39 - 42

To determine whether an applicant is a 'fit and proper person' to hold a dual drivers licence.

11. **APPLICATION FOR DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976** 43 - 46

To determine whether an applicant is a 'fit and proper person' to hold a dual drivers licence.

12. **APPLICATION FOR DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976** 47 - 50

To determine whether an applicant is a 'fit and proper person' to hold a dual drivers licence.

The Public's Rights to Information and Attendance at Meetings

YOU HAVE A RIGHT TO: -

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.

Please Note:

Agenda and individual reports can be made available in large print. Please contact the officer named on the front cover of this agenda **in advance** of the meeting who will be pleased to deal with your request.

The meeting venue is accessible for visitors in wheelchairs.

A public telephone is available in the reception area.

Public Transport Links

- Public transport access can be gained to Brockington via the service runs approximately every half hour from the 'Hopper' bus station at the Tesco store in Bewell Street (next to the roundabout junction of Blueschool Street / Victoria Street / Edgar Street).
- The nearest bus stop to Brockington is located in Old Eign Hill near to its junction with Hafod Road. The return journey can be made from the same bus stop.

If you have any questions about this agenda, how the Council works or would like more information or wish to exercise your rights to access the information described above, you may do so either by telephoning the officer named on the front cover of this agenda or by visiting in person during office hours (8.45 a.m. - 5.00 p.m. Monday - Thursday and 8.45 a.m. - 4.45 p.m. Friday) at the Council Offices, Brockington, 35 Hafod Road, Hereford.



Where possible this agenda is printed on paper made from 100% Post-Consumer waste. De-inked without bleaching and free from optical brightening agents (OBA). Awarded the Nordic Swan for low emissions during production and the Blue Angel environmental label.

COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

FIRE AND EMERGENCY EVACUATION PROCEDURE

In the event of a fire or emergency the alarm bell will ring continuously.

You should vacate the building in an orderly manner through the nearest available fire exit.

You should then proceed to Assembly Point J which is located at the southern entrance to the car park. A check will be undertaken to ensure that those recorded as present have vacated the building following which further instructions will be given.

Please do not allow any items of clothing, etc. to obstruct any of the exits.

Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

MINUTES of the meeting of Regulatory Committee held at Committee Room 1, The Shirehall, Hereford on Tuesday, 28th November, 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, Mrs. A.E. Gray, J.W. Hope MBE, T.W. Hunt, G. Lucas and R. Preece

In attendance: Councillors T.M. James and Ms. G.A. Powell

61. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors H Bramer and PG Turpin.

62. NAMED SUBSTITUTES (IF ANY)

Councillor Mrs AE Gray was appointed named substitute for Councillor H Bramer.

63. DECLARATIONS OF INTEREST

Councillors GW Davis, Brig P Jones and R Preece declared personal interests in respect of Agenda items 8, 9 10 & 11 (Minutes 68,69, 70 & 71).

64. MINUTES

RESOLVED: That the Minutes of the meeting held on 31st October, 2006 be approved as a correct record and signed by the Chairman

65. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH CS10 (PART) IN THE PARISH OF CASTLE FROME

The Rights of Way Manager presented a report about an application for a Public Path Diversion Order to divert part of Footpath CS10 Castle Frome, under Section 119 of the Highways Act 1980. He advised that the application had been made to move the footpath out of a farmyard and a cattle shed which had been built over it in the past. The proposal had general agreement from the Open Spaces Society, the Ramblers Association and the Byways and Bridleways Trust and the Local Ward Member. The applicant had agreed to pay for advertising and to reimburse the Council's costs incurred in making the Diversion Order. He said that it was felt by the officers that the diversion met the tests set out in Section 119 of the Highways Act in that it benefited the owner of the land crossed by the path and that it would provide a better route for users.

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 be made under Section 119 of the Highways Act 1980 in respect of footpath CS10, as illustrated on drawing D236/52-8

66. ALCOHOL CONSUMPTION IN PUBLIC PLACES - DESIGNATION OF PUBLIC PLACES IN HEREFORD

The Environmental Health Manager (Commercial) presented a report about the proposed designation of certain public places in Herefordshire to control anti social drinking in public places. He said that Local authorities had for some time had the power to bring in Byelaws to control the consumption of alcohol in streets, roads and other such places within their areas. The powers were strengthened by the Criminal Justice and Police Act 2001 which made it easier for the Police to take action in respect of those engaged in anti-social drinking. The Council and its predecessor Councils had previously brought Byelaws into effect in parts of the City of Hereford, Ross-on-Wye, Ledbury, and Bromyard. He also said that the powers within the 2001 Act had brought about a change in town centres by helping to reduce loutish and anti-social behaviour. A 'tool' was therefore available to control such behaviour and to reduce the chances of drinking vessels being used in acts of violence. Since 2001 Herefordshire Council had made four such Orders relating to areas within Hereford City, Bromyard, Madley and Peterchurch. He said that approaches had been made to the Council in respect of the designation of an area in Whitecross, Hereford; Coppin Rise Hereford; the conversion (with some changes) of the existing byelaw areas covering Ledbury and Ross-on-Wye and the designation of Leominster and Kington. He also said that the aim of the Orders was not to bring about a comprehensive ban on drinking in the open air but to stop alcohol consumption by a small number of people who directly or indirectly caused problems to the residents neighbouring, or those others wishing to use the areas of land for recreation and enjoyment. He advised that the Police had confirmed that the proposed areas had often been the subject of reports to the police of drink-related anti-social behaviour and nuisance.

The Environmental Health Manager (Commercial) outlined the advertising process for Orders, the case for designation, the effects of making an Order and the financial implications. He also said that the proposals accorded with initiatives already commenced by the Herefordshire Community Safety Partnership with respect to crime and disorder and in particular tackling alcohol-associated problems.

The Committee concurred with the proposals put forward by the Environmental Health Manager (Commercial) to introduce a further Order to designate various areas in Belmont, Whitecross, Lebury, Leominster and Ross-on-Wye. Councillor PJ Edwards a Local Ward Member for Belmont said that local residents welcomed the proposals for Coppin Rise but had some concerns about the Police having sufficient manpower to enforce them. PC Thomas said that the introduction of the Order would assist the police with enforcement. Councillor JW Newman had concerns that the automatic till at Tesco, Belmont was not always supervised and that there was a danger of under-aged persons purchasing alcohol there. It was agreed that the Trading Standards Manager be asked to look into the matter.

The Committee discussed the proposals for Kington and Councillor James the Local Ward Member said that there was considerable opposition from local organisations and the public. It was felt there that there was not a problem of anti-social drinking in public places in Kington and that an Order would have an adverse affect on community social events. It was therefore agreed that the Environmental Health Manager (Commercial) should hold further consultations regarding Kington.

RESOLVED

THAT (i) an Order be made designating those areas detailed in Appendix 1 of the report of the Head of Environmental Health and Trading Standards for the following areas as public places for the purposes of section 13 of the Criminal Justice and Police Act 2001:-

Belmont, Hereford

Whitecross, Hereford

Ledbury

Leominster

Ross-on-Wye; and

(ii) the proposals for Kington be deferred for further consultations.

67. THE GAMBLING ACT 2005

The Legal Practice Manager introduced a report about a proposed Statement of Principles Policy and consultation process for the implementation of the Gambling Act 2005. He said that Section 349 of the Act required all licensing authorities to prepare and publish a statement of the principles that they proposed to apply in exercising their functions under the Act during the three-year period to which the policy applied. He advised that the main aims of the Act 2005 were to:

- prevent gambling being a source of crime or disorder;
- ensure that gambling is conducted in a fair and open way; and
- protect children and the vulnerable from being harmed or exploited by gambling.

The Legal Practice Manager explained the types of licences that would be covered by the Act, the premises that would be involved and the impact of the work on the Licensing Section. He proposed when the policy should take effect and suggested that delegated powers should be given to Licensing officers to granted a certain number of gaming machines in approved premises.

RESOLVED THAT

(i)- Licensing Officers be granted delegated powers to grant licences for up to four gaming machines in alcohol licensed premises;

(ii) the current process where two machines are automatically granted by Licensing Officers and any application for more than two machines will be brought before the Regulatory sub Committee be retained; and

(iii) The Gambling Act 2003 Statement of Principles be adopted

68. STANDARD CONDITIONS FOR FAYRE OAKS CARAVAN PARK IN RELATION TO SEPARATION DISTANCES AND THE POLICY DECISION ON CARAVAN SITE LICENCE CONDITIONS ENFORCEMENT

The Licensing Officer presented a report about an application to vary the standard licensing condition for Fayre Oaks Caravan Park, Kings Acre Road, regarding Section 8 of the Caravan Sites and Control of development Act 1960 in relation to separation distances between caravans and the Council's policy for enforcing any non-compliance. He explained the conditions of the Licence and said that the Council had powers to issue caravan site licences with conditions considered to be necessary in the interests of the safety of residents, staff or visitors to the site. The application for variation was had been put before the Regulatory Committee on 31st October, 2006 and was deferred for further discussion with the Fire Authority, as it was unclear whether 'The Regulatory Reform (Fire Safety) Order 2005' applied to residential sites. Investigation had revealed that it did not and that the powers to vary the site licence conditions still applied. He said that site owners had previously been given three years to comply with the conditions. He advised that the owners had done a considerable amount of work to the site and that only a small number of units needed to comply. Mrs Hurst explained the work that had been undertaken over a rolling programme and that only three – four units were outstanding. She said that a reasonable extension of time would enable the work to be completed.

Having considered all the facts regarding the application and received the views of the Licensing Officer, the Fire Officer and the applicant, the Committee decided that an extension of time could be granted.

RESOLVED THAT

a further period of six months from 28th November, 2006 be granted to the owner of Fayre Oaks Caravan Park, Kings Acre Road, Hereford to comply with Section 8 of the Caravan Sites and Control of development Act 1960 in relation to separation distances between caravans, non-combustible sheds and enclosed porches.

69. APPLICATION FOR VARIATION OF CARAVAN SITE LICENCE FOR 'FAYRE OAKS, CARAVAN PARK, KINGS ACRE ROAD, HEREFORD. HR 4 0SU' - CARAVAN SITES AND CONTROL OF DEVELOPMENT ACT 1950

A report was presented by the Licensing Officer about an application to vary the standard licensing condition for Fayre Oaks Caravan Park, Kings Acre Road, Hereford to enable the removal of a public telephone. He explained the conditions of the Licence and said that the Council had powers to issue caravan site licences with conditions considered to be necessary in the interests of the safety of residents, staff or visitors to the site. The application for variation was had been put before the Regulatory Committee on 31st October, 2006 and was deferred for further discussion with the Fire Authority, as it was unclear whether 'The Regulatory Reform (Fire Safety) Order 2005' applied to residential sites. Investigation had revealed that it did not and that the powers to vary the site licence conditions still applied. He said that the request was for condition 5.11 be removed from the rent licence Condition which required that an immediately accessible telephone should be available on site for calling the emergency services. He advised that the Fire and Rescue Authority have been consulted and felt that given the relative speed of likely fire development in the caravans a telephone on-site would have little benefit in terms of life-saving from fire. A letter had been received from a resident on the site objecting to the removal of the telephone.

The Committee noted that a number of the caravans had land-lines and felt that in view of this together with the spread of mobile phones that the application could be granted.

RESOLVED THAT

an application to vary the standard licensing condition 5.11 for Fayre Oaks Caravan Park, Kings Acre Road, Hereford to enable the removal of a public telephone from the site be approved

70. APPLICATION FOR VARIATION OF CARAVAN SITE LICENCE FOR 'COTTAGE PARK CARAVAN PARK LEDBURY ROAD, ROSS - ON - WYE HR9 7BD' - CARAVAN SITES AND CONTROL OF DEVELOPMENT ACT 1950

The Licensing Officer presented a report about an application to vary the standard licensing conditions to allow a caravan on Plot 23 at Cottage Park, Ledbury Road, Ross-on-Wye to have a closed porch and reduced permitted separation space from 6 metres to 5.65 metres. He explained the conditions of the Licence and said that the Council had powers to issue caravan site licences with conditions considered to be necessary in the interests of the safety of residents, staff or visitors to the site. The application for variation was had been put before the Regulatory Committee on 31st October, 2006 and was deferred for further discussion with the Fire Authority, as it was unclear whether 'The Regulatory Reform (Fire Safety) Order 2005' applied to residential sites. Investigation had revealed that it did not and that the powers to vary the site licence conditions still applied. He said that site owners had previously been given three years to comply with the conditions but had requested the variation because it was not practicable for them to comply without incurring considerable expense.

Councillors MR Cunningham and Mrs AE Gray, two of the ward Members for Ross-on-Wye, drew attention to the well-kept condition of the caravans and suggested that the variation be granted for the lifetime of the two caravans involved. The Fire Officer felt that the shortfall was relatively low and that although it could pose a problem for the caravans, it did not constitute a risk to life

Having considered all the facts regarding the application and received the views of the Licensing Officer, the Fire Officer and the applicants, the Committee decided that the variation could be granted.

RESOLVED THAT

the variation of Caravan Site Licensing Conditions be approved so that an enclosed porch be permitted to remain at 23 Cottage Park, Ledbury Road, Ross-on-Wye and that a reduced permitted separation space from 6 metres to 5.65 metres be allowed between 23 and 24 Cottage Park, Ledbury Road, Ross-on-Wye for the life of the unit.

71. APPLICATION FOR VARIATION OF CARAVAN SITE LICENCE FOR 'SALTMARSH CASTLE CARAVAN PARK STOURPORT ROAD, BROMYARD HR7 4PN' - CARAVAN SITES AND CONTROL OF DEVELOPMENT ACT 1950

The Licensing Officer presented a report about an application in respect of Saltmarsh Castle Caravan Park, Stourport Road, Bromyard to vary the standard licensing conditions by removing conditions 5.2 and 5.4 and replace them with a single condition to allow 1KG powder extinguisher only to be provided at each fire point, and a further condition stating that a suitable and sufficient fire risk assessment shall be recorded and maintained for the whole site. He explained the conditions of the Licence and said that the Council had powers to issue caravan site licences with conditions considered to be necessary in the interests of the safety of residents, staff or visitors to the site. The application for variation was had been put before the Regulatory Committee on 31st October, 2006 and was deferred for further discussion with the Fire Authority, as it was unclear whether The Regulatory Reform (Fire Safety) Order 2005 applied to residential sites. Investigation had revealed that it did not and that the powers to vary the site licence conditions still applied.

The Fire Officer felt that a single fire extinguisher was not adequate and that if changes were made to the fire points each should be provided with a minimum of two 1KG fire extinguishers.

Having considered all the facts regarding the application and received the views of the Licensing Officer and the Fire Officer, the Committee decided that the variation could be granted but that it should comply with the Fire Officer's requirements.

RESOLVED THAT

the application in respect of Saltmarsh Castle Caravan Park, Stourport Road, Bromyard be granted to vary Caravan Site Licensing Conditions by removing conditions 5.2 and 5.4 and replace them with a single condition to allow two 6KG dry powder extinguishers at each fire point to be housed in such a way that they are accessible but not subject to corrosion.

72. 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.

73. 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

In the absence of the applicant, the Committee decided refuse the application set out in agenda Item No. 13 because this was the third time that the applicant had failed to appear before the Committee for the matter to be determined.

74. 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

The Licensing Officer referred to agenda item No. 14 and provided the Committee with the circumstances which had given rise to the suspension of a dual Hackney

Carriage/Private Hire driver's licence being referred to the Committee. The Committee decided to take into consideration the applicant's spent and unspent convictions. The driver and his legal representative explained the circumstances which had led to him being charged with a public order offence. The driver's legal representative suggested that it would be unreasonable for the suspension to continue until the case had been to Court because it was pre-judging the matter

Having considered all of the facts put forward by the Licensing Officer, the applicant and his representative, the Committee decided to lift the suspension and consider the matter further when the outcome of the Court hearing was known.

75. 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

The Licensing Officer referred to agenda item No. 15 and provided the Committee with the circumstances which had given rise to the suspension of a vehicle licence being referred to the Committee. The Committee heard an explanation from the vehicle owner about the circumstances which had given rise to the suspension.

Having considered all of the facts put forward by the Licensing Officer and the owner, the Committee decided that the suspension should remain in place pending the outcome of legal proceedings.

The meeting ended at 12.20 p.m.

CHAIRMAN

HIGHWAYS ACT 1980, SECTION 119, PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH LW4 (PART) IN THE PARISH OF LLANWARNE

Wards Affected

Pontrilas

Purpose

To re - consider an application under the Highways act 1980, section 119, to make a public path diversion order to divert part of footpath LW4 in the parish of Llanwarne.

Key Decision

This is not a key decision

Considerations

1. An application was made in September 1987 by Major Sevenoaks of The Old Coach House, Llanwarne, also on behalf of Mr and Mrs Darby of The Old Rectory, Llanwarne. The County Engineer and Planning Officer of Hereford and Worcester County Council (HWCC) decided to make the Order under delegated powers, but there was a delay in making the order. The applicants were informed in 1994 (appendix 2) and again in 1996 (appendix 3) that if they wished the diversion to proceed, the Council would need written confirmation from the Landowner, Mr Birchley to have the path diverted onto his property. In 1994 the applicants returned a conveyance that they thought might fulfil the necessary legal agreement for the new footpath. Legal guidance indicated that the conveyance was not fit for this purpose.
2. The applicants seemed to believe that the diversion was complete since the new route was provided and the old route stopped up, even though no order had been made. The route proposed is currently in use with a Hereford and Worcester County Council (HWCC) footpath signpost and stile at the western end. It is an enclosed pathway at a width of 3 metres running between the adjoining landowners and is well defined and clear.
3. Despite further correspondence the landowners consent has never been agreed in writing. In September 1997 the Rights of Way section of HWCC drafted a report to recommend that the application be not proceeded with. This report was never sent out to the local member but in October 1997, the Director of Environmental Services decided to go ahead with making the order without landowner consent. Revised route descriptions were drawn up and sent to Director of Administrative and Legal Services (DALs) of HWCC, and the local District Council consulted over the last part of 1997 and early 1998. Despite this action the Order was never made by DALs. There are no documented reason as to why this order was never made.

Further information on the subject of this report is available from Rob Hemblade, Public Rights of Way Manager on (01432) 261981

4. Current obstructions along the legal line are highlighted on the attached map (appendix 4)

1: Obstruction by small shrubs and a vegetable bed.

2: Obstruction by a stock-proof fence (boundary fence between The Old Coach House and The Old Rectory) and a hedge of young beech.

3: Obstruction by young apple tree.

4: Obstruction by a 0.25m high rail barrier and a drop of 0.5 metres from the tarmac surfaced car park.

5: Remainder of path runs across a lawn to exit at a stock-proof boundary fence which obstructs it.

It is noted that between points 1,2,3 and 4 there is a fowl run with a high fence of netting.

5. Since 2003 numerous attempts have been made to obtain the landowners consent or to confirm that the applicants will indemnify the Council against any possible claim for compensation, including two registered letters and a telephone conversation with the occupier of the property in the latter part of 2003. To date there has been no response to the repeated attempts to obtain this permission (appendix 5).
6. In June 2004 Mrs Darby and Mr and Mrs Sevenoaks were informed that since the landowners written permission has not been received the Rights of Way Section could not proceed with the application and would recommend its rejection (appendix 6). No reply or comment has been received.
7. On 31st January 2006 the Council's Regulatory Committee resolved to defer a decision on the application for a period of 6 months to allow the applicants further time to resolve the outstanding issues.
8. On 31st January 2006 the people currently involved in the application, Mr. And Mrs. Sevenoaks, Mr. Birchley and Mrs Darby were all advised of the Regulatory Committees decision. In February 2006 and June 2006 there was some email correspondence with Mr. Birchley and Public Rights of Way section and on 14th July 2006 a letter was received from Mr. B. Burton, the current owner of the Old Rectory. However neither of these correspondence resulted in progress being made to resolve the main issues.
9. Due to pressures of work, it has not been possible to submit a decision report until now. However it has meant the all parties have had a year to resolve matters but no progress has been made.

Alternative Options

Further information on the subject of this report is available from Rob Hemblade, Public Rights of Way Manager on (01432) 261981

The Council could make the order, but runs the risk of a compensation claim being made against it. A valuation of the land in question was estimated by the Valuation & Industrial Agency in 1997. This figure may now to be much greater.

Risk Management

If the applicants refuse to open up the legal line of the path, the Council may have to resort to enforcement action to secure public access.

Consultees

Local Member Cllr J P Hart and County Engineer and Planning Officer, both gave their support to the making of the order in 1988 before the problem of landowner consent was raised. Statutory undertakers were also consulted in 1988.

Cllr Davis was consulted on 3rd September 2004 with a copy of this draft report. He telephoned 30th September to say that he would try to contact Mr Birchley (landowner). Lisa Hughes has since spoken to Cllr Davis who has not been able to contact the landowner. He pointed out that the local public had been walking the diverted route for years not knowing any different. He wondered whether the problem could be resolved with a modification order. However, this application for a diversion requires resolution and therefore it is felt necessary to reject it for the reasons set out above. If the parish council or landowners applied for a modification order in the future then that would be considered under separate legislation.

Recommendation

That the application be rejected.

Reasons

The applicants do not have the permission of the landowner onto whose land they wish to divert the footpath (as shown in order plan D52/245-4 in appendix 1).

Appendices

Appendix 1: Order plan D52/245-4

Appendix 2: Letter to applicants dated 9th June 1994

Appendix 3: Letter to applicants dated 9th October 1996

Appendix 4: Obstructions on legal line

Appendix 5: Letter to Landowner in 2003

Appendix 6: Letter to applicants dated 2nd June 2004

Appendix 7: Letters sent to interested parties dated 31st January 2006

Appendix 8: Email correspondence with Mr. Birchley dated February and June 2006

Further information on the subject of this report is available from Rob Hemblade, Public Rights of Way Manager on (01432) 261981

Appendix 9: Letter received from Mr. Burton dated 14th July 2006

Further information on the subject of this report is available from Rob Hemblade, Public Rights of Way Manager
on (01432) 261981

HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH LV46 (PART) IN THE PARISH OF LLANVEYNOE

Report By: Public Rights of Way Manager

Wards Affected:

Golden Valley South

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath LV46 in the parish of Llanveynoe.

Considerations

- 1 The application was made on 8th March 1997 by Mr Andrew King, who was the landowner at the time. The reasons for making the application were to move the footpath out of the applicants' garden, for reasons of privacy and security.
- 2 Pre-order consultation was carried out in 1997 by the Public Rights of Way department. The proposal has general agreement of the Open Spaces Society, the Ramblers' Association and South Herefordshire District Council. The Parish Council have no objections but are concerned that the proposal has the agreement of the adjoining landowner. The Byways and Bridleways Trust have requested that a check for higher rights is made - none have been claimed. Statutory undertakers have not yet been consulted.
- 3 Written agreement has not yet been obtained from the adjoining landowner, whose property is also affected by the application. In 1997 this was a Mr G Jones, of New Forest Farm in Craswall.
- 4 On his original application form, the applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. However, the last written communication from him was on 16th October 1997 (see appendix B.) No reply was received to the letter sent to Mr King in January 2006 at his London address, although a 28-day deadline for response was given. A copy of the letter was sent to Black Hill Farm at the same time; this was returned undelivered. His last known phone number in London is 'not recognised.'
- 5 Attempts have been made to identify the current landowner, to allow them the opportunity to take over as the applicants for this diversion. This has been unsuccessful; Land Registry searches show the land as being unregistered. The clerk to the Longtown Group Parish Council thinks that Mr King may have moved away; she does not have details of the current owners. On a visit to the site in October 2006, it appeared that the property is inhabited infrequently, if at all. There is no obvious vehicle access to the property from the county roads in Olchon Valley; the track marked on the attached plan is grassed over and runs down a very steep slope.

- 6 The legal line of the footpath was open and unobstructed when the site was visited in October 2006. A member of the public made the last recorded report of problems on the section of footpath LV46 at Black Hill Farm in 2002. This related to overgrowth of vegetation.
- 7 As it has not been possible to contact the landowner for the property, Local Member consultation has not been carried out.

Alternative Options

There are no alternative options.

Risk Management

There is a risk that the current landowners will contact us with regard to the progress of this diversion. If they chose to continue with the proposal, a new application form would need to be completed and pre-order consultation repeated.

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Longtown Group Parish Council.
- South Herefordshire District 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 D262/244-46 and that the application is rejected.

Appendices

Appendix A-Order Plan, drawing number: D262/244-46

Appendix B-Letter sent to Mr A. King in January 2006

APPLICATION FOR AN AMUSEMENT WITH PRIZES MACHINES PERMIT FOR OVER TWO MACHINES – SECTION 34 THE GAMING ACT 1968

Report By: Head of Environmental Health and Trading Standards

Wards Affected:

Three Elms

1. Purpose

To consider an application for an Amusements with prizes permit for three gaming machines at the Grandstand, Grandstand Road, Hereford HR4 9NH.

2. Background Information

3. Responsibility for issuing Section 34 permits to pubs and other alcohol-licensed premises was transferred to licensing authorities in November 2005 as a result of changes made by the Licensing Act 2003. Licensing Authorities will continue to be responsible for authorising gaming machines in pubs under the Gambling Act 2005.
4. The appropriate authority shall not refuse to grant or renew a permit without affording to the applicant or a person acting for him an opportunity of appearing before, and being heard by, the appropriate authority or (where that authority is a local authority) a committee of the local authority.
5. Grounds for refusal to grant or renew permit.

The grant of a permit shall be at the discretion of the appropriate authority; but The appropriate authority shall not refuse to renew a permit except

- i) on the grounds that [while the permit has been in force] they or their authorised representatives have been refused reasonable facilities to inspect the premises.
- ii) Where the permit is expressed to be granted for the purposes of section 34 (5E) of this Act on the grounds that the condition specified if the Act.

Statutory Conditions

- a) In the case of premises where admission is restricted to persons aged 18 or over, that no person under 18 is admitted to the premises; and
- b) In the case where admission is not restricted to persons aged 18 or over-
 - i) that any section 34 machine is located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effectively to prevent access otherwise than by means of and entrance design of for the purpose;

- ii) that only persons aged 18 or over are admitted to an area of the premises in which any such machine is located;
 - iii) that access to an area of the premises in which any such machine is located is supervised;
 - iv) that any area of the premises in which any such machine is located is so arranged as to permit all parts of it to be observed; and
 - v) that at the entrance to and inside, any such area there are prominently displayed notices indicating that access to the area is prohibited to persons aged under 18
6. The Regulatory committee considered and approved the Gambling Act 2005 Policy on 28 November 2006. The policy can be found in appendix 4.
7. Grandfather rights will apply to the number of machines issued on the Section 34 permit. If there are more than two machines the permit holder will have to apply for a gaming machine permit under the Gambling Act 2005 when the outgoing permit expires.
8. **Permit Application**
9. Green King Brewing & Retail Ltd of Westgate Brewery, Bury St, Edmonds, Suffolk IP33 1QT have applied for an Section 34 Amusements with prizes permit for 3 gaming machines. Appendix 1
10. The application has been brought to the Committee for consideration because the applicant has not previously been issued with a permit for 3 gaming machines at this premises however the premises has previously been issued with a permit for 3 machines (see below).
11. Appendix 3 provides a map of the GIS map of the area.
12. **Previous Licence**
13. The premises has previously under different management been issued with a permit for three gaming machines on 14 September 2004 by the Clerk to the Licensing Justices issued by the Magistrates Court. Appendix 2
14. **Summary of Representations**
15. The police were consulted they had no objections to the application.
16. **Options: -**
- It is for the committee to decide :-
- a) to grant the permit for three machines
 - b) to reject the application providing reasons for the decision
 - d) to come to some other conclusion.

Background Papers

Appendix 1 Application form

Appendix 2 Magistrates Court Permit

Appendix 3 GIS map of area.

Appendix 4 Herefordshire Council Gambling Act 2005 policy.



HEREFORDSHIRE
COUNCIL

Statement of Principles

Gambling Act 2005

CONTENTS

Part I – Introduction

- (a) General
- (b) Functions of Gambling Commission
- (c) Function of Licensing Authorities
- (d) Key terms and definitions

Part II – Herefordshire Council

- (a) Background
- (b) Exchange of information
- (c) Enforcement

Part III – Licensing Objectives

- (a) Background
- (b) Crime and Disorder
- (c) Protection of Children and Vulnerable People
- (d) Ensuring gambling is conducted in a fair and open way objective
- (e) Conditions
- (f) Links to other policies

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 propose 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/supplies 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
- Herefordshire schools and collages
- Herefordshire Ward and Parish Councillors
- Gambling establishments in Herefordshire
- Local residents by public notice in Hereford Times
- Persons holding a licensing Act 2003 licence
- Environmental health
- Trading standards
- PCT
- Hereford and Worcester Fire Authority
- Tot Bookmakers Ltd
- Specialist gambling solicitors
- Race Course Association Ltd

The consultation took place between August 2006 and November 2006, 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 28 November 2006 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. 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.

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.

HACKNEY CARRIAGE AND PRIVATE HIRE REQUEST FROM JOHN WHEADON (CITY TAXIS) TO DEVIATE FROM STANDARD CONDITION 1.1 (NEW HACKNEY VEHICLE LICENCE). TOWN POLICE CLAUSES ACT LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

REPORT BY: Head of Environmental Health and Trading Standards

Purpose

1. The report is to assist the Regulatory Committee consider a request from Mr Wheadon to allow three saloon cars with wheelchair friendly swivel front passenger seats to be licensed as Hackney Carriages contrary to condition number 1.1 in the vehicle licence conditions (Appendix 1).

Legal Background

2. Under the terms of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 local authorities may make reasonable conditions for the regulation of both hackney carriages and private hire vehicles, drivers and operators. S47 (1) enables the Local Authority to attach to the grant of a Hackney Carriage Licence such conditions, as they consider reasonably necessary. In the case of R v Manchester City Council Ex parte Reid, the Court took the view that compulsory wheel chair access vehicles could be deemed “reasonably necessary”.
3. The latest version of the vehicle conditions were bought before Regulatory Committee and approved on the 14/12/05.
4. This particular condition has been in existence since 2001 and was imposed to limit the increase in numbers following de-regulation, and to meet the requirements of the Disability Discrimination Act (DDA).
5. Under Section 32 of the Disability Discrimination Act 1995 the Secretary of State has got the power to make regulations securing that it is possible for a disabled person to get into and out of taxis in safety and comfort whilst remaining in their wheelchairs. Herefordshire Council has been identified as a “first phase” Local Authority and as such the provisions of the DDA 1995 will be introduced between 2010 and 2020. As a consequence once this is in force that district council will be unable to grant a licence for a hackney carriage unless it conforms to the taxi accessibility regulations. The Local Authority is able to apply for an exemption from the taxi accessibility regulations, but this will only be considered if the Local Authority can demonstrate that the demand for disabled access vehicle is met.

Risks

4. If permission is given this may set a precedent and result in numerous similar applications.
5. Reduce the growth annually in wheelchair accessible vehicles as new applicants could fit swivel seats to saloons rather than provide the wheelchair access vehicles. This would reduce the chances of any exemption under the DDA being given and be detrimental to the whole Taxi Trade.

Issues

6. Two of the vehicles have been licensed as Private Hire Vehicles, which are not required to have wheelchair access the third was used by Mr Wheadon to replace an existing saloon vehicle on a Hackney Carriage plate, which has reached its 8 years of age. The vehicles are permitted to be licensed as private hire vehicles as the provisions for private hire are different to that of hackney carriages, therefore, the Council's conditions do not require private hire vehicles to have wheelchair access.
7. Mr Wheadon has been in the Taxi Trade in excess of 20 years and is aware of the current requirements for licensed vehicles.
8. Mr Wheadon currently has 10 private hire vehicles and 20 hackney carriages.

Options

It is for the Regulatory Committee to decide: -

- The saloon cars with the disabled friendly swivel front passenger seats can be licensed as new hackney carriages.
- The saloon cars with the disabled friendly swivel front passenger seats cannot be licensed as new hackney carriages.
- or reach some other decision.

Document is Restricted

Document is Restricted

Document is Restricted

