

Regulatory Sub Committee

Date: **Wednesday, 17th October, 2007**

Time: **10.00 a.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 Sub Committee

To: Councillors JHR Goodwin, P Jones CBE and A Seldon

	Pages
1. ELECTION OF CHAIRMAN	
To elect a Chairman for the hearing.	
2. APOLOGIES FOR ABSENCE	
To receive apologies for absence.	
3. NAMED SUBSTITUTES (IF ANY)	
To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
4. DECLARATIONS OF INTEREST	
To receive any declarations of interest by Members in respect of items on the Agenda.	
5. APPLICATION FOR VARIATION OF PREMISES LICENCE 'TESCO HEREFORD 2, ABBOTSMEAD ROAD, HEREFORD, HR2 7XS.'	1 - 8
To consider an application for variation of the premises licence in respect of Tesco Hereford 2, Abbotsmead Road, Hereford, HR2 7XS.	
6. APPLICATION FOR VARIATION OF PREMISES LICENCE 'COUNTRYWIDE FARMERS STORE, RAILWAY INDUSTRIAL ESTATE NORTH, WORCESTER ROAD, LEOMINSTER, HR6 8AR.'	9 - 14
To consider an application for variation of the premises licence in respect of Countrywide Farmers Store, Railway Industrial Estate North, Worcester Road, Leominster, HR6 8AR.	
EXCLUSION OF THE PUBLIC AND PRESS	
In the opinion of the Proper Officer, the following item will not be, or is likely not to be, open to the public and press at the time it is 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 the report contains information relating to an individual under paragraph 1 of part 1 of Schedule 12A of the Act.
7. APPLICATION FOR A PERSONAL LICENCE	15 - 16
To consider an application for a Personal 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.

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.

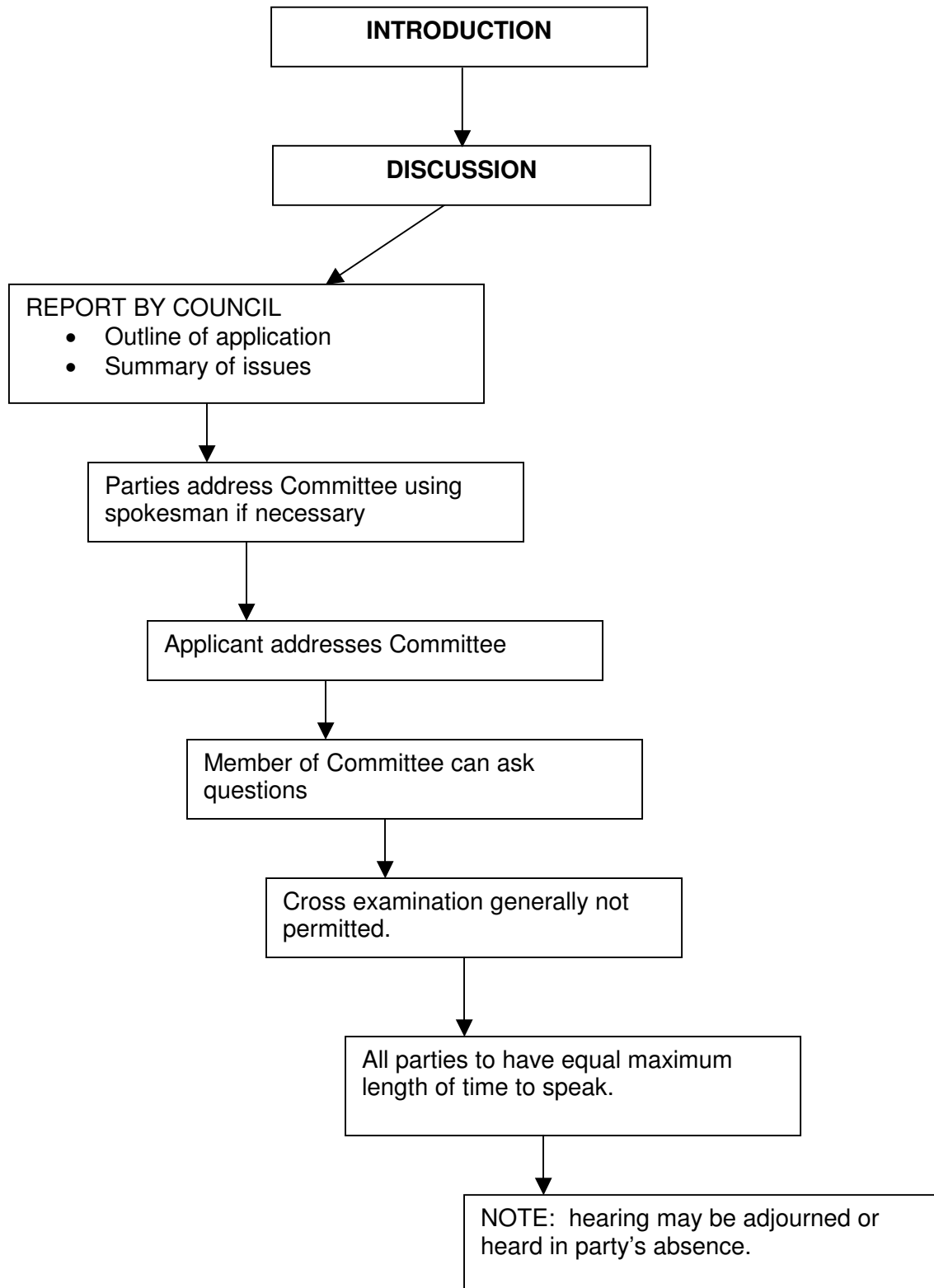
You should vacate the building in an orderly manner through the nearest available fire exit.

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.

LICENCING HEARING FLOW CHART



APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'TESCO HEREFORD 2, ABBOTSMEAD ROAD, BELMONT, HEREFORD, HR2 7XS' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Belmont

1. Purpose

To consider an application for variation of the premises licence in respect of Tesco Hereford 2, Abbotsmead Road, Hereford, HR2 7XS.

2. Background Information

Applicant	TESCO STORES LTD	
Solicitor	N/A	
Type of application: Variation	Date received:	28 Days consultation
	25/08/07	21/09/07

The advertisement for the premises has not been seen at this time.

3. Current Licence

The current premises licence was issued on the 4th October, 2005 following a Committee hearing which authorised the hours shown below with the conditions attached.

HOURS OF LICENSABLE ACTIVITY

	Supply of Alcohol	Open to the public
Monday	0800 - 0000	0800 - 0000
Tuesday	0001 - 0000	0001 - 0000
Wednesday	0001 - 0000	0001 - 0000
Thursday	0001 - 0000	0001 - 0000
Friday	0001 - 0000	0001 - 0000
Saturday	0001 - 2200	0001 - 2200
Sunday	1000 - 1600	1000 - 1600

CONDITIONS

The application was granted in respect of the hours of operation for the licensable activities described in the box above together with the following conditions

- The mandatory conditions of The Licensing Act 2003.
- There be methods devised to discourage drinking in public spaces in the vicinity of the premises.
- No person shall be permitted to enter, or continue to be in, the premises in an intoxicated state.
- All parts of the premises within the cartilage of the applicant's ownership shall be kept free of litter. There be sufficient litter bins provided within the cartilage and these be emptied in accordance with an effective operational schedule.

4. Variation Licence Application

The application for a variation has received representation from a local councillor and comments from the Environmental Health Officer.

5. Summary of Application

The licensable activity applied for is: -
Supply of Alcohol Off Licence

6. The following hours have been requested in respect of the sale of alcohol (*off the premises only*): -

Monday to Saturday	08:00 hours - 22:30 hours
Sunday	10:00 hours -16:30 hours

7. The hours the premises to be open to the public are: -

Monday to Saturday	08:00 hours - 22:00 hours
Sunday	10:00 hours -16:00 hours

8. Seasonal Variations

There is no application for seasonal variation.

9. Non Standard hours

There is no application for non-standard hours.

10. Removal of Conditions

The applicant has not applied to remove any conditions.

11. Summary of Representations

Copies of the representations are shown within the background papers.

West Mercia Police

West Mercia Police have made no representation regarding this application.

Environmental Health

Environmental Health has comment in respect of the confusion over opening hours and trading hours.

Fire Authority

The Fire Authority has made no representation regarding this application.

Interested Parties

A representation has been received from a local councillor who is also a local resident. The representation addresses all four of the licensing objectives.

12 Issues for Clarification

The revised Guidance Notes issued under Section 182 of the Licensing Act 2003 by the Department of Culture Media and Sport under section 10.21 states: -

‘Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping’

The authority has requested the applicant to explain to the Committee why the application requests the supply of alcohol until 2230 hours on a Saturday and 1630 hours on a Sunday when the application states that the premise will close to the public 30 minutes before these times.

13 Herefordshire Council Licensing Policy

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

14 Options: -

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

- Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003.
- Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it necessary for the promotion of the licensing objectives and add mandatory condition set out in the Licensing Act 2003.
- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premise supervisor
- To reject the application.

15 Background Papers

- Application Form
- Location Map
- Copy of Environmental Health Officers Comments
- Copy of Representation form

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

NOTES

Guidance issued under section 182 of the Licensing Act 2003

RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS

- 9.8. A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.
- 9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.
- 9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review.
- 9.11. Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgement. This may be difficult for ward councillors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any ward councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.
- 9.11. The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

Hours of trading

10.21 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

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

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.

NOTES

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

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

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

The operating schedule

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

An operating schedule must also set out the following details: -

the relevant licensable activities to be conducted on the premises;

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

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**APPLICATION FOR VARIATION OF PREMISES
LICENCE IN RESPECT OF 'COUNTRYWIDE FARMERS
STORE, RAILWAY INDUSTRIAL ESTATE NORTH,
WORCESTER ROAD, LEOMINSTER, HR6 8AR' -
LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Leominster

1. Purpose

To consider an application for variation of the premises licence in respect of Countrywide Farmers Store, Railway Industrial Estate North, Worcester Road, Leominster, HR6 8AR.

2. Background Information

Applicant	Countrywide Farmers Plc	
Solicitor	N/A	
Type of application: Variation	Date received: 22/08/07	28 Days consultation 18/10/07

The advertisement for the premises has been seen.

3. Current Licence

The currently licence authorises the sale of alcohol (Off Premise only) as follows: -

Monday to Saturday: 08.00 - 17.30
Sunday: 10.00 - 16.00

4. Variation Licence Application

The application for a variation has received a representation from the Environmental Health Officer.

5. Summary of Application

The licensable activity applied for is: -
Supply of Alcohol (Off Sales)

6. The following new hours have been requested: -

Monday to Saturday: 08.00 – 23.00
Sunday: 10.00 – 22.30

7. The hours the premises are to be open to the public are: -

Monday to Saturday: 08.00 – 23.00
Sunday: 10.00 – 22.30

8. Seasonal Variations

There is no application for seasonal variation.

9. Non Standard hours

The application states 'The store may stay open longer for occasional events and at times of peak demand which may, for example, include Easter and Christmas'.

10. Removal of Conditions

The applicant has not applied to remove any conditions.

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

West Mercia Police have made no representation to make in respect of Crime and Disorder.

Environmental Health

Environmental Health made comment regarding the ad-hoc nature of the application and has requested that the hours be restricted.

Fire Authority

The Fire Authority has made no representation regarding this application.

12. Issues for Clarification

The revised Guidance Notes issued under Section 182 of the Licensing Act 2003 by the Department of Culture Media and Sport under section 10.21 states: -

'Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping'.

The applicant has been asked to explain to the Committee why they have applied for a terminal hour for the sale of alcohol up to 6 ½ hours after this, which is contrary to the guidance issued.

13. Herefordshire Council Licensing Policy

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

14. Options: -

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

- Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003.
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- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premise supervisor
- To reject the application.

15. **Background Papers**

- Application Form
- Comments of EHO
- Copy of representation
- Location Map

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

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