

Regulatory Sub Committee

Date: **Wednesday, 21st November, 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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01432 261885 Fax: 01432 260286
E-mail: rclarke@herefordshire.gov.uk*

**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Regulatory Sub Committee

To: Councillors PGH Cutter, 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 NEW PREMISES LICENCE 'KINGTON YOUTH HOSTEL, VICTORIA ROAD, KINGTON, HR5 3BX.' To consider an application for a new premises licence in respect of Kington Youth Hostel, Victoria Road, Kington, HR5 3BX.	1 - 6
6. APPLICATION FOR NEW PREMISES LICENCE 'LEOMINSTER YOUTH HOSTEL, THE OLD PRIORY, LEOMINSTER, HR6 8EQ.' To consider an application for a new premises licence in respect of Leominster Youth Hostel, The Old Priory, Leominster, HR6 8EQ.	7 - 12
7. ADULT GAMING CENTRE LICENCE 'FIRST MOTORWAY SERVICES LTD, SYMONDS YAT SERVICES, A40 NORTHBOUND, WHITCHURCH, SYMONDS YAT, HR9 6DP.' To consider revocation of the adult gaming centre licence in respect of 'First Motorway Services Ltd, Symonds Yat Services, A40 Northbound, Whitchurch, Symonds Yat, HR9 6DP.	13 - 14

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- 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.
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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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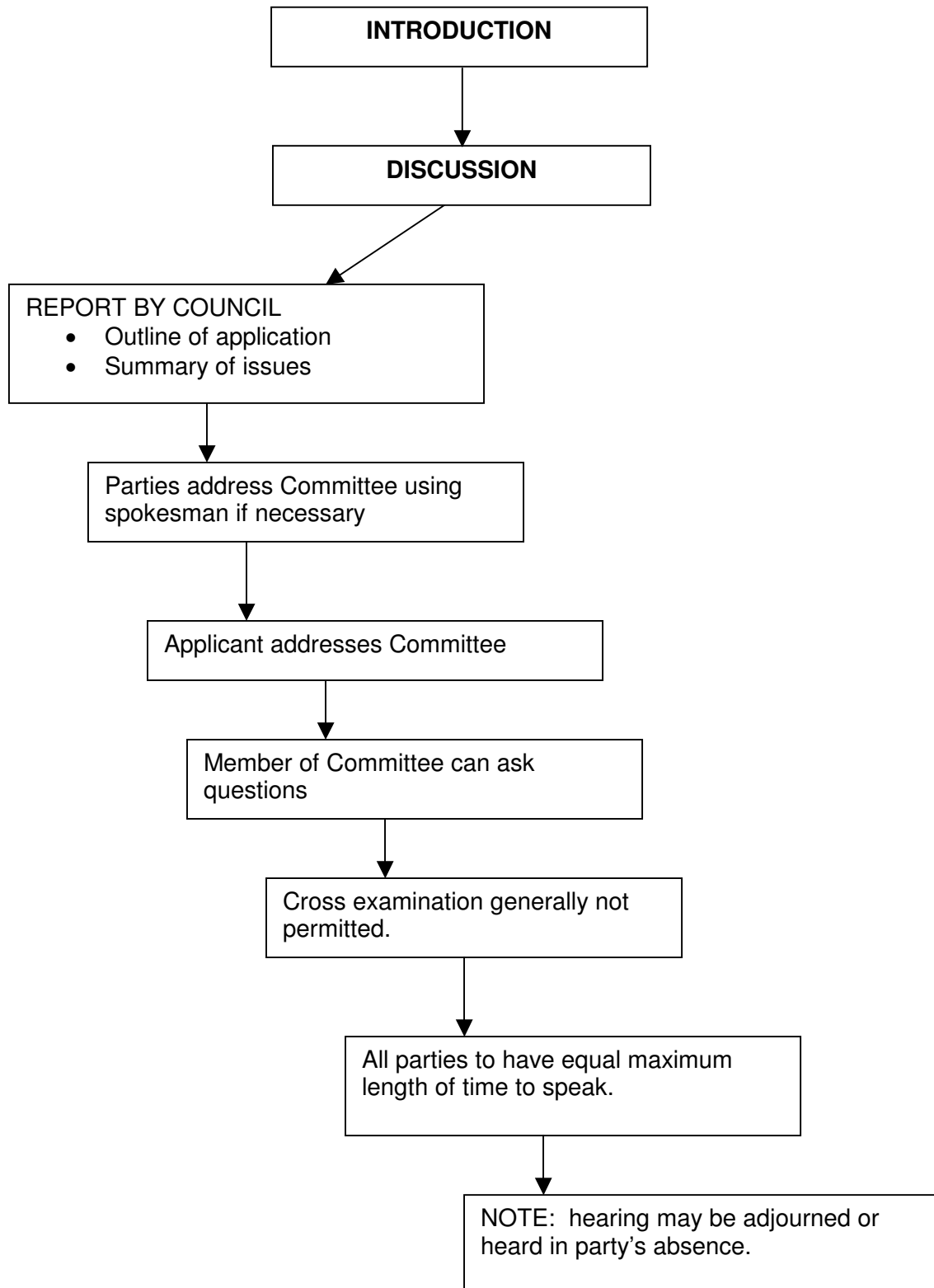
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LICENCING HEARING FLOW CHART



APPLICATION FOR NEW PREMISES LICENCE 'KINGTON YOUTH HOSTEL, VICTORIA ROAD, KINGTON, HR5 3BX.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Kington

1. Purpose

To consider an application for a new premises licence in respect of Kington Youth Hostel, Victoria Road, Kington, HR5 3BX.

2. Background Information

Applicant	YHA (England & Wales) Limited	
Solicitor	Flint Bishop	
Type of application: New	Date received: 03/10/07	28 Days consultation 31/10/07

The advertisement for the premise has been seen and accepted.

3. New Licence Application

The application for a new licence has received representations by responsible authorities and interested parties. It is therefore now brought before committee to determine the application.

4. Summary of Application

The licensable activities applied for are: -

Plays

Films

Indoor Sporting Events

Live Music

Recorded Music

Anything of a similar nature to Live/Recorded Music

Performance of Dance

Provision of facilities for making music

Provision of facilities for dancing

Provision of facilities similar to making music/dancing

5. The following hours have been applied for in respect of all the above activities (*Indoors*) and for the premise to be open to the public: -

All days of the week 0000 – 0000

6. Non Standard hours

There is no application for 'non-standard' hours.

7. **Summary of Representations**

Copies of the representations and suggested conditions can be found within the background papers.

West Mercia Police

Have no representation to make in relation to the application.

Environmental Health

The Environmental Health Officer has made an extensive representation in relation to the application. This representation addresses the licensing objectives of Public Safety, Public Nuisance and the Protect of Children from harm.

In respect of Public Safety she has requested 12 additional conditions.

In respect of Public Nuisance she has requested a further 3 conditions to address public nuisance. Of note is the condition that 'No entertainment, which wholly or partly contains amplified sound, shall be provided between 00.00 hours and 09.00 hours. This condition does not apply to background music'.

In addition to this she seeks four additional conditions to address the licensing objective of protection of children from harm.

Fire Authority.

The fire authority has no comment to make in relation to the application.

Interested Parties.

The Local Authority has received two (2) letters of representation in respect of the application, from a local resident.

The concerns relate to:

- Prevention of Public Nuisance
- Protection of children from harm

8. **Issues for Clarification**

This Authority has requested clarification from the applicant as follows: -

The application provides no details at all in respect of any of the licensable activities that they are requesting the licensing authority to authorise. The applicant has been asked to provide full details to the Committee in respect of each licensable activity requested.

The Licensing Authority is required to consider each application on an individual basis, yet the application forms submitted in each case are identical. The applicant has been asked to provide clarification that these applications have been made on an individual basis and that the promotion of the four licensing objectives has been considered on each occasion.

9. **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.

10. **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.

11. **Background Papers**

- a. Public Representation
- b. Environmental Health & Trading Standards Comments
- c. Application Form

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.

NOTES**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 judgment. This may be difficult for ward councilors 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 councilor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.12 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.

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

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

**APPLICATION FOR NEW PREMISES LICENCE
'LEOMINSTER YOUTH HOSTEL, THE OLD PRIORY,
LEOMINSTER, HR6 8EQ.' - LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Leominster

1. Purpose

To consider an application for a new premises licence in respect of Leominster Youth Hostel, The Old Priory, Leominster, HR6 8EQ.

2. Background Information

Applicant	YHA (England & Wales) Limited	
Solicitor	Flint Bishop	
Type of application: New	Date received: 03/10/07	28 Days consultation 31/10/07

The advertisement for the premise has been seen and accepted.

3. New Licence Application

The application for a new licence has received representations by responsible authorities and interested parties. It is therefore now brought before committee to determine the application.

4. Summary of Application

The licensable activities applied for are: -

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Provision of facilities similar to making music/dancing

5. The following hours have been applied for in respect of all the above activities (Indoors) and for the premise to be open to the public: -

All days of the week 0000 – 0000

6. Non Standard hours

There is no application for 'non-standard' hours.

7. **Summary of Representations**

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Have no representation to make in relation to the application.

Environmental Health

The Environmental Health Officer has made an extensive representation in relation to the application. This representation addresses the licensing objectives of Public Safety, Public Nuisance and the Protect of Children from harm.

In respect of Public Safety she has requested 12 additional conditions.

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In addition to this she seeks four additional conditions to address the licensing objective of protection of children from harm.

Fire Authority.

The fire authority has no comment to make in relation to the application.

Interested Parties.

The Local Authority has received eleven (11) letters of representation in respect of the application, from a local resident.

The concerns relate to:

- Prevention of Crime & Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of children from harm

8. **Issues for Clarification**

This Authority has requested clarification from the applicant as follows: -

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CONSIDERATION OF REVOCATION OF THE ADULT GAMING CENTRE LICENCE IN RESPECT OF 'FIRST MOTORWAY SERVICES LTD, SYMONDS YAT SERVICES, A40 NORTHBOUND, WHITCHURCH, SYMONDS YAT, HR9 6DP.' – GAMBLING ACT 2005

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Kerne Bridge

1. Purpose

To consider revocation of the adult gaming centre licence in respect of 'First Motorway Services Ltd, Symonds Yat Services, A40 Northbound, Whitchurch, Symonds Yat, HR9 6DP.

2. Legislation

The Gambling Act 2005

Section 184 - Annual fee

(1) The holder of a premises licence—

(a) shall pay a first annual fee to the licensing authority within such period after the issue of the licence as may be prescribed, and

(b) shall pay an annual fee to the licensing authority before each anniversary of the issue of the licence.

Section 193 - Revocation for failure to pay fee

(1) Where the holder of a premises licence fails to pay the annual fee in accordance with regulations under section 184 the licensing authority shall revoke the licence.

(2) But the licensing authority may disapply subsection (1) if they think that a failure to pay is attributable to administrative error.

The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007

Section 6 - First annual fee for premises licence

(1) The amount of the first annual fee for a premises licence shall be determined by the relevant licensing authority.

Section 7 - Date by which first annual fee is payable

(1) Where a licence comes into effect on the issue date, the first annual fee for the licence shall be paid within 30 days after that date.

3. Background

First Motorway Services held a Section 34(5E) licence under the Gaming Act 1968. In essence this allowed them to have gaming machines, which paid a jackpot of a maximum of £250.

Upon the introduction of the Gambling Act 2005 existing holders of these licences were given to the opportunity to convert their existing licence into a Gambling Act Adult Gaming Centre Licence.

First motorway applied to Herefordshire Council to do this and a converted licence for the premise can into force on 1st September 2007.

The annual fee for the premises became payable in the period between 1st September and 30th September 2007. The onus for payment is placed on the licence holder under the act, as failure to pay means that the Licensing Authority shall revoke the licence.

On 26th October 2007 the Licensing Authority wrote to the holder of the licence (First Motorway) advising them that they must pay the annual fee within the next 7 days otherwise the Licensing Authority would revoke the licence.

No response has been received from First Motorway.

First Motorway has been sent a further letter advising them of this hearing.

4. **Options**

There are 3 options available to Committee: -

1. Revoke the Licence in accordance with Section 193 Gambling Act 2005
2. To allow the licence holder further time to pay
3. To reach some other conclusion.

5. **Officer Recommendation**

Section 193 states that the Licensing Authority shall revoke the licence unless there is an administrative error. Due to the Licensing Service having written to the licensee reminding them the payment is due, using the address provided on the application it is felt that lack of payment is not an administrative error therefore the Committee is advised to revoke the licence.

8. **Background Papers**

- a. Letter sent to First Motorway on 26th October 2007
- b. Letter sent to First Motorway regarding the hearing

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.