

# A G E N D A

## Regulatory Sub Committee

Date: **Friday, 9th May, 2008**

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Time: **1.00 p.m.**

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Place: **The Council Chamber, Brockington,  
35 Hafod Road, Hereford**

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

*For any further information please contact:*

*Ricky Clarke, Democratic Services Officer, Tel:  
01432 261885 Fax: 01432 260286  
E-mail: [rclarke@herefordshire.gov.uk](mailto:rclarke@herefordshire.gov.uk)*

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**County of Herefordshire  
District Council**



# AGENDA

## for the Meeting of the Regulatory Sub Committee

To: Councillors JW Hope MBE, 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.

**GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS**

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is and leave the meeting room.

**5. PREMISES LICENCE REVIEW 'M & G COUNTY WINES, 60 COMMERCIAL ROAD, HEREFORD, HR1 2BP.'**

1 - 6

To consider an application for a review of a premises licence in respect of M & G County Wines, 60 Commercial Road, Hereford, HR1 2BP.

6.	<b>PREMISES LICENCE REVIEW 'ASHBY STORES, 38 HIGH STREET, KINGTON, HR5 3BJ.'</b>	7 - 12
	To consider an application for a review of a premises licence in respect of Ashby Stores (Now trading as Nisa), 38 High Street, Kington, HR5 3BJ.	
7.	<b>PREMISES LICENCE REVIEW 'LOCAL, 28 HIGH STREET, LEOMINSTER, HR6 8LZ.'</b>	13 - 18
	To consider an application for a review of a premises licence in respect of Local, 28 High Street, Leominster, HR6 8LZ.	
8.	<b>PREMISES LICENCE REVIEW 'SPAR, 3/5 BARGATES, LEOMINSTER, HR6 8EX.'</b>	19 - 24
	To consider an application for a review of a premises licence in respect of Spar, 3/5 Bargates, Leominster, HR6 8EX.	
9.	<b>PREMISES LICENCE REVIEW 'BROMYARD KEBAB &amp; BURGER SHOP, 3 CRUXWELL STREET, BROMYARD, HR7 4EB.'</b>	25 - 30
	To consider an application for a review of a premises licence in respect of Bromyard Kebab & Burger Shop, 3 Cruxwell Street, Bromyard, HR7 4EB.	
10.	<b>APPLICATION FOR A PREMISES LICENCE 'THE BIG CHILL, EASTNOR CASTLE DEER PARK, EASTNOR, LEDBURY, HR8 1RD.'</b>	31 - 32
	To consider an application for a premises licence in respect of the Big Chill, Eastnor Castle Deer Park, Eastnor, Ledbury, HR8 1RD.	

# **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.

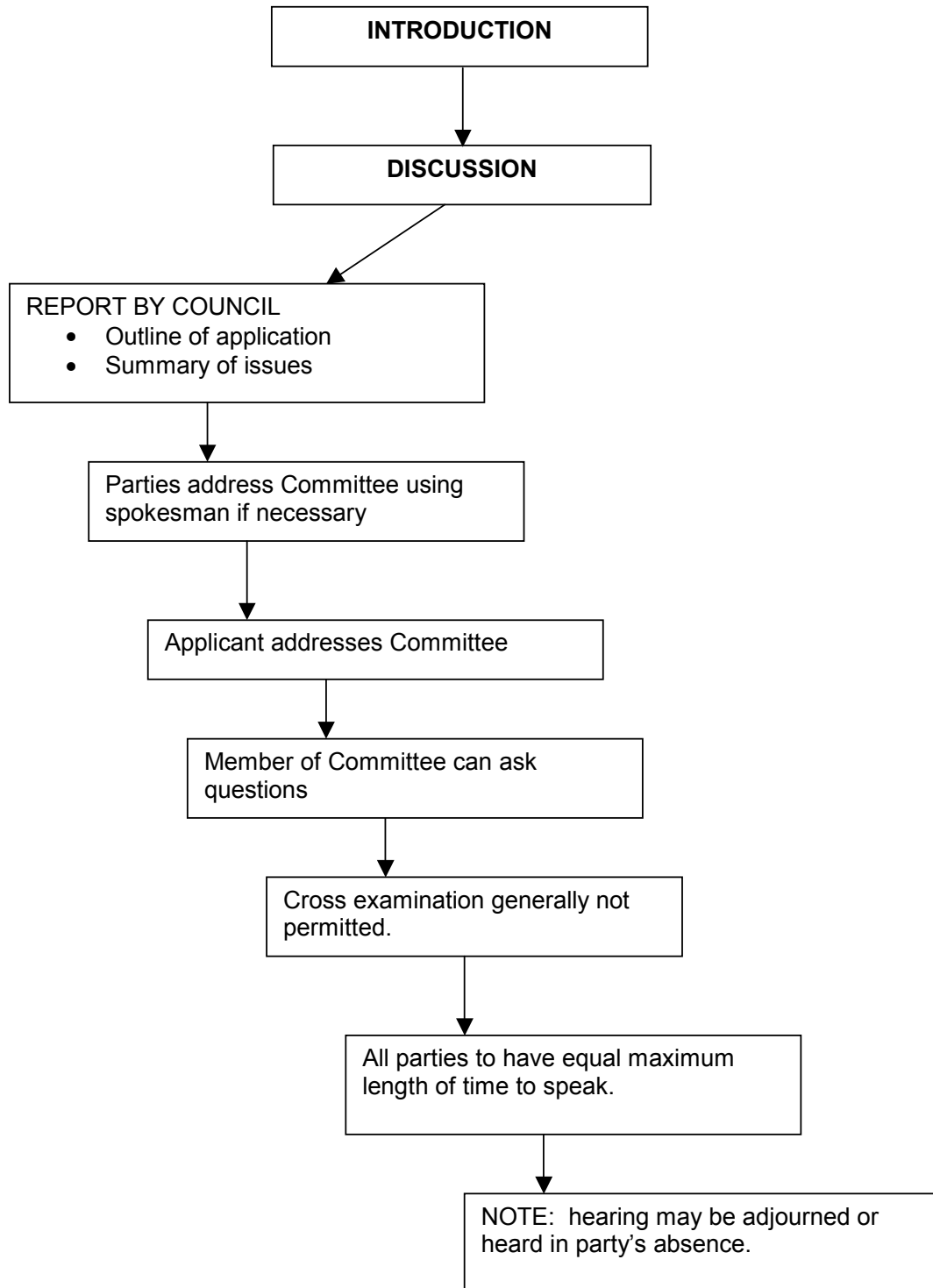
Please do not allow any items of clothing, etc. to obstruct any of the exits.

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 REVIEW OF A PREMISE LICENCE ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT OF 'M & G COUNTY WINES, 60 COMMERCIAL ROAD, HEREFORD, HR1 2BP'.**

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

**Wards Affected:**

Hereford

**1. Purpose**

To consider an application for a review of a premises licence in respect of M & G County Wines, 60 Commercial Road, Hereford, HR1 2BP.

**2. Background Information**

Applicant	<b>Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.</b>	
Premise Licence Holder	<b>Mr Keith IRVING, M &amp; G County Wines, 60 Commercial Road, Hereford, HR1 2BP</b>	
Solicitor	<b>N/K</b>	
Type of application: <b>Review</b>	Date received: <b>21/03/08</b>	28 Days consultation <b>17/04/08</b>

A notice advertising the review was placed on the premise prior to the start of the statutory consultation period and also displayed in the public area of the Licensing Authority (Bath Street).

**3. Current Licence**

The current licence allows: -

Sale by Retail of Alcohol

- On weekdays, other than Christmas Day, 8 am to 11 pm
- On Sundays, other than Christmas Day, 10 am to 10.30 pm
- On Christmas Day, 12 noon to 3 pm and 7 pm to 10.30 pm
- On Good Fridays, 8 am to 10.30 pm

There are no Non-Standard Timings.

**4. Summary of Application**

The application for review relates to the following licensing objectives: -

- Prevention of Crime & Disorder
- Protection of children from harm

**5. The grounds for the review are: -**

The premise has been the subject of two separate test purchase operations in 3 months and has sold on both occasions

6. **The information provided to support this application is: -**

At 1520 hours on 16 December 2007, Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old female was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

The DPS was in the store and advised.

The person who made the sale had received limited training on age restricted sales.

At 2025 hours on 1st March 2008, Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 15 year old female was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

The person who made the sale was a personal licence holder and had been instructed on the stores under 21 policy.

7. **Summary of Representations**

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

**West Mercia Police**

Have has since provided additional evidence in support of the application.

**Trading Standards**

Who have a responsibility for the protection of children from harm have made representation and have suggested to the Committee 10 conditions, which may be suitably applied to the premise licence.

**Environmental Health, Fire Authority and Interested Parties.**

No representation has been received from these.

8. **Committees Responsibility**

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all parties;
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

**9. Options: -**

- Take no action
- Take any of the following steps: -
  - (a) to modify the conditions of the licence;
  - (b) to exclude a licensable activity from the scope of the licence;
  - (c) to remove the designated premises supervisor;
  - (d) to suspend the licence for a period not exceeding three months;
  - (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

**10. Background Papers**

- a. Police Representation
- b. Trading Standard Comments
- c. Application Form
- d. Location plan

**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.

**REVIEWS**

11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.22

- A number of reviews may arise in connection with crime that is not directly connected with licensable activities
- Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all.
- Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.

11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

Section 52

- (11) A determination under this section does not have effect—
- (a) until the end of the period given for appealing against the decision, or
  - (b) if the decision is appealed against, until the appeal is disposed of.

## **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 REVIEW OF A PREMISE LICENCE ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT OF 'ASHBY STORES, 38 HIGH STREET, KINGTON, HR5 3BJ'.**

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

**Wards Affected:**

Kington

**1. Purpose**

To consider an application for a review of a premises licence in respect of Ashby Stores, 38 High Street, Kington, HR5 3BJ, which is now trading as Nisa Supermarket.

**2. Background Information**

Applicant	<b>Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.</b>	
Premise Licence Holder	<b>Mr D H J Ashby, 38 High Street, Kington, HR5 3BJ</b>	
Solicitor	<b>N/K</b>	
Type of application: <b>Review</b>	Date received: <b>21/03/08</b>	28 Days consultation <b>17/04/08</b>

A notice advertising the review was placed on the premise prior to the start of the statutory consultation period and also displayed in the public area of the Licensing Authority (Bath Street).

**3. Current Licence**

The current licence allows: -

Sale by Retail of Alcohol

- On weekdays, other than Christmas Day, 8 am to 11 pm
- On Sundays, other than Christmas Day, 10 am to 10.30 pm
- On Christmas Day, 12 noon to 3 pm and 7 pm to 10.30 pm
- On Good Fridays, 8 am to 10.30 pm

There are no Non-Standard Timings.

**4. Summary of Application**

The application for review relates to the following licensing objectives: -

- Prevention of Crime & Disorder
- Protection of children from harm

**5. The grounds for the review are: -**

The premise has been the subject of two separate test purchase operations in 3 months and has sold alcohol to under 18's on both occasions.

6. **The information provided to support this application is: -**

At 1510 hours on 28 December 2007, Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old male was served alcohol without being challenged concerning his age.

The person who made the sale was issued with a fixed penalty notice.

The person who made the sale had received no training on age restricted sales.

At 1810 hours on 1 March 2008, Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 15 year old female was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

The person who made the sale was aware of the stores over 21 policy and had been instructed not to serve those who look under 18.

7. **Summary of Representations**

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

**West Mercia Police**

Have has since provided additional evidence in support of the application.

**Trading Standards**

Who have a responsibility for the protection of children from harm have made representation and have suggested to the Committee 10 conditions, which may be suitably applied to the premise licence.

**Environmental Health, Fire Authority and Interested Parties.**

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8. **Committees Responsibility**

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- The representations (including supporting information) presented by all parties;
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

**9. Options: -**

- Take no action
- Take any of the following steps: -
  - (a) to modify the conditions of the licence;
  - (b) to exclude a licensable activity from the scope of the licence;
  - (c) to remove the designated premises supervisor;
  - (d) to suspend the licence for a period not exceeding three months;
  - (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

**10. Background Papers**

- a. Police Representation
- b. Trading Standard Comments
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- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
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- for the sale of smuggled tobacco and alcohol.

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## **Licensing Authorities power to exercise substantive discretionary powers.**

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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 REVIEW OF A PREMISE LICENCE  
ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT  
OF 'LOCAL, 28 HIGH STREET, LEOMINSTER, HR6 8LZ'.**

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

**Wards Affected:**

Leominster

**1. Purpose**

To consider an application for a review of a premises licence in respect of Local, 28 High Street, Leominster, HR6 8LZ.

**2. Background Information**

Applicant	<b>Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.</b>	
Premise Licence Holder	<b>First Quench Retailing Ltd, Enjoyment Hall, Bessemer Road, Welwyn Garden City, Herts. AL7 1BL.</b>	
Solicitor	<b>N/K</b>	
Type of application: <b>Review</b>	Date received: <b>21/03/08</b>	28 Days consultation <b>17/04/08</b>

A notice advertising the review was placed on the premise prior to the start of the statutory consultation period and also displayed in the public area of the Licensing Authority (Bath Street).

**3. Current Licence**

The current licence allows: -

Sale by Retail of Alcohol

- On weekdays, other than Christmas Day, 8 am to 11 pm
- On Sundays, other than Christmas Day, 10 am to 10.30 pm
- On Christmas Day, 12 noon to 3 pm and 7 pm to 10.30 pm
- On Good Fridays, 8 am to 10.30 pm

There are no Non-Standard Timings.

**4. Summary of Application**

The application for review relates to the following licensing objectives: -

- Prevention of Crime & Disorder
- Protection of children from harm

**5. The grounds for the review are: -**

The premise has been the subject of two separate test purchase operations in 3 months and has sold alcohol to under 18's on both occasions.

6. **The information provided to support this application is: -**

At 1300 hours on 28 December 2007, Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 15 year old female was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

The DPS was not at the store and was not due to visit for 3 weeks.

The person who made the sale had received no training on age restricted sales.

At 2040 hours on 1 March 2008, Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 15 year old female was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

The DPS was not at the store.

The person who made the sale had only been given a verbal instruction not to sell to under 18's.

The local police officer has visited the store on a number of occasions, but has never been able to locate the DPS/Manager who is apparently based in Gloucestershire.

The staff have stated on occasions that they are afraid to challenge young people who enter the store and intimidate them, and that they have been to afraid to report a number of thefts that have taken place.

7. **Summary of Representations**

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

**West Mercia Police**

Have since provided additional evidence in support of the application.

**Trading Standards**

Who have a responsibility for the protection of children from harm have made representation and have suggested to the Committee 10 conditions which may be suitably applied to the premise licence.

**Environmental Health, Fire Authority and Interested Parties.**

No representation has been received from these.



**8. Committees Responsibility**

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- The steps that are necessary to promote the licensing objectives;
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**9. Options: -**

- Take no action
- Take any of the following steps: -
  - (a) to modify the conditions of the licence;
  - (b) to exclude a licensable activity from the scope of the licence;
  - (c) to remove the designated premises supervisor;
  - (d) to suspend the licence for a period not exceeding three months;
  - (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

**10. Background Papers**

- a. Police Representation
- b. Application Form
- c. Location plan

**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.

**REVIEWS**

11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.22

- A number of reviews may arise in connection with crime that is not directly connected with licensable activities
- Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all.
- Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.

11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

Section 52

- (11) A determination under this section does not have effect—
- (a) until the end of the period given for appealing against the decision, or
  - (b) if the decision is appealed against, until the appeal is disposed of.

## **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 REVIEW OF A PREMISE LICENCE  
ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT  
OF 'SPAR, 3/5 BARGATES, LEOMINSTER, HR6 8EX'.**

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

**Wards Affected:**

Leominster

**1. Purpose**

To consider an application for a review of a premises licence in respect of Spar, 3/5 Bargates, Leominster, HR6 8EX.

**2. Background Information**

Applicant	<b>Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.</b>	
Premise Licence Holder	<b>Tates Limited, Long Acre Industrial Estate, Rosehill, Willenhall, West Midlands. WV13 2JP.</b>	
Solicitor	<b>N/K</b>	
Type of application: <b>Review</b>	Date received: <b>21/03/08</b>	28 Days consultation <b>17/04/08</b>

A notice advertising the review was placed on the premise prior to the start of the statutory consultation period and also displayed in the public area of the Licensing Authority (Bath Street).

**3. Current Licence**

The current licence allows: -  
Sale by Retail of Alcohol

- On weekdays, other than Christmas Day, 8 am to 11 pm
- On Sundays, other than Christmas Day, 10 am to 10.30 pm
- On Christmas Day, 12 noon to 3 pm and 7 pm to 10.30 pm
- On Good Fridays, 8 am to 10.30 pm

There are no Non-Standard Timings.

**4. Summary of Application**

The application for review relates to the following licensing objectives: -

- Prevention of Crime & Disorder
- Protection of children from harm

**5. The grounds for the review are: -**

The premise has been the subject of two separate test purchase operations in 3 months and has sold to under 18's on both occasions.

6. **The information provided to support this application is: -**

At 1517 on 30 December 2007, Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old female was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

At 2000 hours on 1 March 2008, Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 15 year old female was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

The person who made the sale was the DPS and was aware of the stores over 21 policy as well as the till prompts and the in store notices.

7. **Summary of Representations**

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

**West Mercia Police**

Have has since provided additional evidence in support of the application.

**Trading Standards**

Who have a responsibility for the protection of children from harm have made representation and have suggested to the Committee 10 conditions, which may be suitably applied to the premise licence.

**Environmental Health, Fire Authority and Interested Parties.**

No representation has been received from these.

8. **Committees Responsibility**

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all parties;
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

9. **Options: -**

- Take no action
- Take any of the following steps: -
  - (a) to modify the conditions of the licence;
  - (b) to exclude a licensable activity from the scope of the licence;
  - (c) to remove the designated premises supervisor;
  - (d) to suspend the licence for a period not exceeding three months;
  - (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

10. **Background Papers**

- a. Police Representation
- b. Trading Standard Comments
- c. Application Form
- d. Location plan

**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.

**REVIEWS**



11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.22

- A number of reviews may arise in connection with crime that is not directly connected with licensable activities
- Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all.
- Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.

11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

Section 52

- (11) A determination under this section does not have effect—
- (a) until the end of the period given for appealing against the decision, or
  - (b) if the decision is appealed against, until the appeal is disposed of.

## **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 REVIEW OF A PREMISE LICENCE ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT OF 'BROMYARD KEBAB & BURGER SHOP, 3 CRUXWELL STREET, BROMYARD, HR7 4EB'.**

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

**Wards Affected:**

Bromyard

**1. Purpose**

To consider an application for a review of a premises licence in respect of Bromyard Kebab & Burger Shop, 3 Cruxwell Street, Bromyard, HR7 4EB.

**2. Background Information**

Applicant	<b>Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.</b>	
Premise Licence Holder	<b>Mr Isa SORGUICU, Bromyard Kebab &amp; Burger Shop, 3 Cruxwell Street, Bromyard. HR7 4EB.</b>	
Solicitor	<b>N/K</b>	
Type of application: <b>Review</b>	Date received: <b>13/03/08</b>	28 Days consultation <b>10/04/08</b>

A notice advertising the review was placed on the premise prior to the start of the statutory consultation period and also displayed in the public area of the Licensing Authority (Bath Street).

**3. Current Licence**

The current licence allows: -

Provision of late night refreshment

Sunday - Thursday: 23:00 - 00:00

Friday & Saturday: 2300 - 0130

There are no Non-Standard Timings.

**4. Summary of Application**

The application for review relates to the following licensing objectives: -

- Prevention of Crime & Disorder
- Prevention of public nuisance

**5. The grounds for the review are: -**

'The premise is the source of a number of complaints of both Crime and Disorder, and Public Nuisance.

The premise licence authorises the provision of late night refreshment only until 0000 hours Sunday to Thursday and 0130 hours on a Friday and Saturday.

There are a number of complaints that the premise operates outside these hours and by doing so contributes to incidents of crime and disorder and public nuisance.

At 0210 hours on Sunday 9 March 2008, the premise was still open serving about 20 customers in the shop. At this time a very violent fight took place inside the premise.

6. **The information provided to support this application is: -**

At 0210 on 09/03/08 a very violent fight involving about 10 people takes place inside the shop, during which one male is knocked to the floor unconscious, and a large window is smashed.

This incident is the subject of an ongoing police enquiry and will result in at least 12 people being arrested for offences of violent disorder or assault.

During this incident the staff and licence holder took no action at all to prevent or stop the fight.

During this incident the staff and licence holder did not call the police or ambulance service.

During this incident the staff and licence holder continued to serve customers.

The licence holder has refused to make a statement or provide any evidence to the police in respect of this fight.

The licence holder has made a statement in which he states he is not willing to attend court to give evidence in respect of the incident in the premise.

7. **Summary of Representations**

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

**West Mercia Police**

Have since provided additional evidence in support of the application.

**Planning Department**

Have made representation and advise the Licensing Authority that the planning permission restricts the use of the premise between 9 am to 11 pm Sunday to Thursday and from 9 am to Midnight on Friday and Saturday.

**Environmental Health, Fire Authority and Interested Parties.**

No representation has been received from these.

8. **Committees Responsibility**

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all parties;

- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

9. **Options: -**

- Take no action
- Take any of the following steps: -
  - (a) to modify the conditions of the licence;
  - (b) to exclude a licensable activity from the scope of the licence;
  - (c) to remove the designated premises supervisor;
  - (d) to suspend the licence for a period not exceeding three months;
  - (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

10. **Background Papers**

- a. Police Representation
- b. Application Form
- c. Location plan

**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

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## REVIEWS

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- A number of reviews may arise in connection with crime that is not directly connected with licensable activities
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- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
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**APPLICATION FOR GRANT OF PREMISES LICENCE  
'BIG CHILL, EASTNOR CASTLE DEER PARK,  
EASTNOR, LEDBURY, HR8 1RD.' - LICENSING ACT  
2003**

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

**Wards Affected:**

Ledbury

**1. Purpose**

To consider an application for a premises licence in respect of the Big Chill, Eastnor Castle Deer Park, Eastnor, Ledbury, HR8 1RD.

**2. Background Information**

Applicant	<b>Chillfest Ltd 257-259 Pentonville Road, London, N1 9NL</b>	
Solicitor	<b>N/A</b>	
Type of application: <b>New</b>	Date received: <b>19/03/08</b>	28 Days consultation <b>16/04/08</b>

The advertisement for the premises has been seen and is correct.

**3. Licence Application**

The application for a new premises licence has received representations objecting to the grant of a licence from the Police, Fire Authority and Environmental Health. It is therefore now brought before committee to determine the application.

**4. Summary of Application**

The application is for a time limited licence to operate between 31 July and 4 August 2008.

5. The licensable activities applied for are (all indoors and outdoors): -  
Plays, Films, Live Music, Recorded Music, Performance of dance, Provisions for making music, Provision of facilities for dancing, entertainment of a similar nature to the provision of facilities for music and dance, Late Night Refreshment and Supply of Alcohol (On & Off Premises).

**6. Adjournment Application**

Chillfest Ltd to have verbally requested the hearing be adjourned to allow them further time to produce an Event Management Plan to the satisfaction of the responsible authorities.

**7. Point of Law**

The Licensing Act 2003 (Hearings) Regulations 2005 section 11(1) states: -  
'an authority may extend a time limit provided for in these Regulations for a specified period where it considers this to be necessary in the public interest'.

**8. Herefordshire Council Licensing Policy**

In making its decision the committee will be obliged to have regard to its own policy, the DCMS guidance and all documents submitted in respect of the application.

**9. 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.
- To adjourn the matter to a specified date if they felt that it is in the public interest to do so

**10. Officers Recommendation**

The Licensing Officer recommends that as this is a large scale public event where there will be about 35,000 people in attendance that it would be in the public interest to allow the applicant time to provide the necessary documentation to the satisfaction of the responsible authorities.

**11. Background Papers**

- Application

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