

A G E N D A

Regulatory Sub Committee

Date: **Friday, 4th July, 2008**

Time: **10.00 a.m.**

Place: **The Council Chamber, Town Hall, St
Owens Street, Hereford**

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

For any further information please contact:

*Ricky Clarke, Democratic Services Officer, Tel:
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E-mail: rclarke@herefordshire.gov.uk*

Herefordshire Council

AGENDA

for the Meeting of the Regulatory Sub Committee

To: Councillors CM Bartrum, JW Hope MBE 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. APPLICATION FOR A REVIEW OF A PREMISE LICENCE 'THE HORSE & JOCKEY, 9-10 NEW STREET, ROSS-ON-WYE, HR9 7DA.'

1 - 24

To consider an application for a review of a premise licence in respect of The Horse & Jockey, 9-10 New Street, Ross On Wye, HR9 7DA.

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| 6. | APPLICATION FOR A VARIATION OF A PREMISES LICENCE 'THE MARCHES RESTAURANT, GROUND FLOOR AND BASEMENT, 26-29 UNION STREET, HEREFORD' | 25 - 30 |
| | To consider an application for a new premises licence in respect of The Marches Restaurant, Ground Floor and Basement, 26-29 Union Street, Hereford. | |
| 7. | APPLICATION FOR A VARIATION OF A PREMISE LICENCE 'GOLDEN GALLEON FISH & CHIPS, 61 COMMERCIAL ROAD, HEREFORD.' | 31 - 34 |
| | To consider an application for a variation of a premises licence in respect of Golden Galleon Fish & Chips, 61 Commercial Road, Hereford. | |
| 8. | APPLICATION FOR A NEW PREMISES LICENCE AND VARIATION OF EXISTING PREMISES LICENCE 'SHIPLEYS, 38 EIGN GATE, HEREFORD, HR4 0AB.' | 35 - 42 |
| | To consider an application for a new premises licence and variation of premise licence in respect Shipleys, 38 Eign Gate, Hereford. HR4 0AB | |

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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.
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A public telephone is available in the reception area.

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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.

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

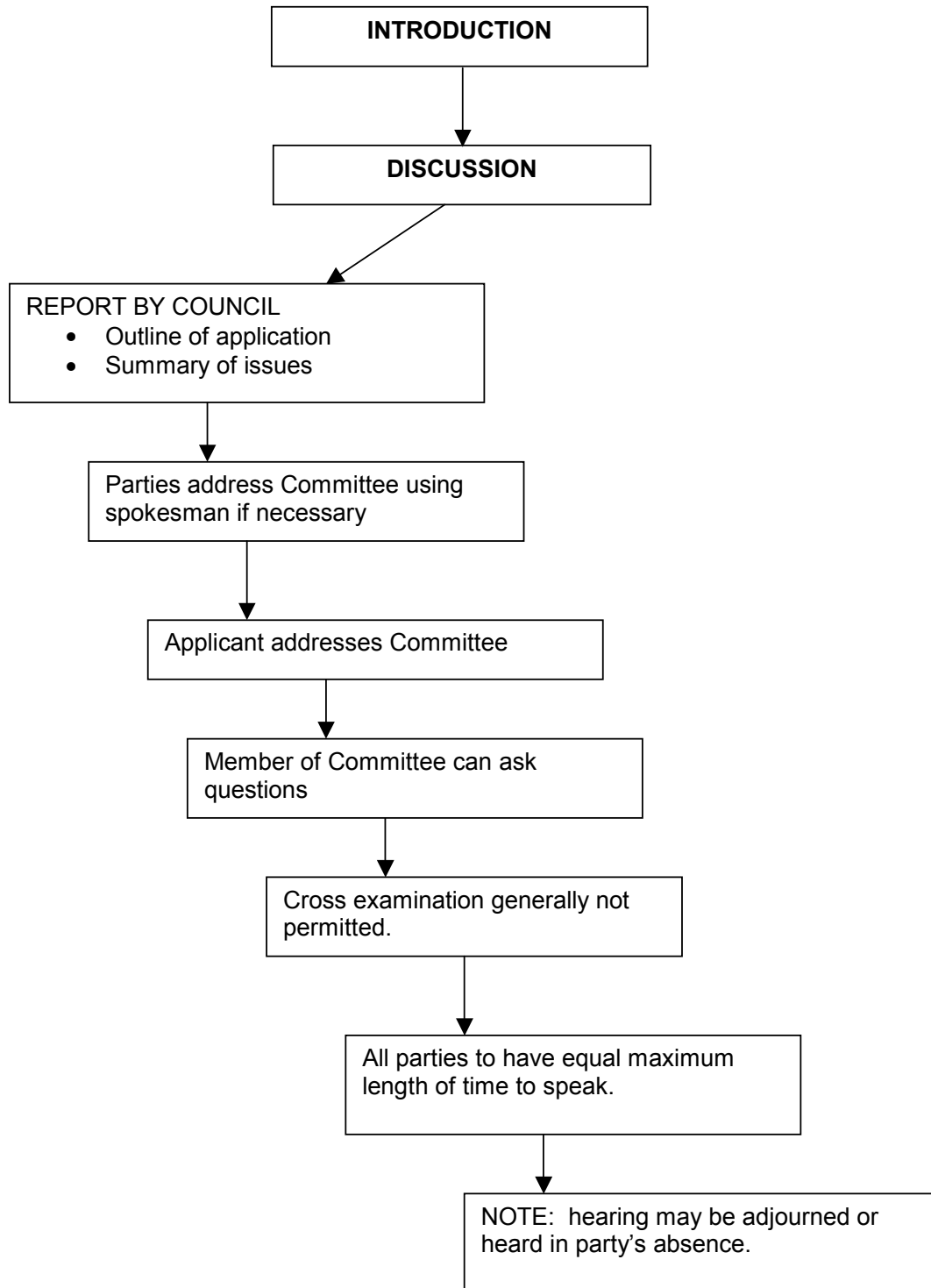
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Please do not allow any items of clothing, etc. to obstruct any of the exits.

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LICENCING HEARING FLOW CHART



APPLICATION FOR REVIEW OF A PREMISE LICENCE ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT OF 'THE HORSE & JOCKEY, 9-10 NEW STREET, ROSS ON WYE, HR9 7DA'.

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Ross on Wye

The application was first considered at a meeting of the Regulatory Sub-Committee on 28 May 2008. The meeting was adjourned after the applicant raised new concerns in respect of the premises that had not been detailed in the application for review. The additional representations are attached to the report as Appendix 1 to Appendix 4.

1. Purpose

To consider an application for a review of a premises licence in respect of 'The Horse & Jockey, 9-10 New Street, Ross On Wye, HR9 7DA'.

2. Background Information

Applicant	Mrs Janet ROBERTS 8 New Street, Ross on Wye, HR9 7DA	
Premise Licence Holder	Punch Taverns Plc Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire, DE14 2WF	
Solicitor	TLT	
Type of application: Review	Date received: 2/04/08	28 Days consultation 29/04/08

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: -
A performance of live music
Any playing of recorded music
Facilities for similar entertainment
Dancing
Sale by retail of alcohol

At the times shown: -
Monday-Wednesday: 11:00 - 23:00
Thursday-Saturday: 11:00 - 00:00
Sunday: 12:00 - 22:30

The following non-standard timings apply to all licensable activities listed above: -

Friday, Saturday, Sunday and Monday of all Bank Holiday weekends, Thursday preceding Easter weekend, Christmas Eve, Boxing Day: An additional hour permitted at the end of normal licensing hours.

On New Year's Eve the permitted hours shall extend through from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.

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 stated by Mrs Roberts are: -**

I wish to request of the Licensing Authority:

1) PREVENTION OF PUBLIC NUISANCE

a) suspension of the pub's music licence and a responsibility put upon the Landlord to reduce the rowdiness of his customers (inside the pub) until it has been satisfactorily sound-proofed.

b) A restriction on drinking and smoking in the pub doorway and on the pavement outside the pub and my front door.

2) PREVENTION OF PUBLIC DISORDER

a) A responsibility put upon the Landlord to ensure customers do not behave in drunk, foul-mouthed and disorderly fashion on the pavement outside the pub and my home.

b) A responsibility put upon the Landlord to ensure customers are refused entry or further drink when they have clearly had enough - this, in the hope that customers will no longer vomit outside my front door.

6. **The information provided to support this application by Mrs Roberts states: -**

The voluntary limitation on noise emissions from the Horse and Jockey pub into my home was never very successful and has now broken down. Due to the recent change of personnel at Punch Taverns and loss of officers in the Environmental Health Dept the matter appears to have been dropped since no-one contacted me, as promised, to progress the matter of sound-proofing. In addition, the pub (in a residential area) has now become a very rowdy town-centre pub with fights, bad language, personal abuse (to me) by drunken people outside my home.

Recent instances of noise nuisance:

Music audible in my bedroom and preventing sleep: Sat 16/2/08, Sat 23/2, Sun 24/2, Sat 1/3, Sat 8/3, Thurs 13/3

Music audible in downstairs rooms - most evenings and/or afternoons

Loud yelling/shouting/laughing by customers, very audible downstairs Tues 11/3, Sun 24/2, Sat 23/2, Wed 20/1, Sat 16/2

Recent instances of customers drinking/smoking/being noisy outside pub and my home: Sat 9/2 two instances of loud noise o/s my front door; Sat 23/2 two instances c a dozen people at 9.30pm; Tue 4/3; 2/2 Sun 10/2 4 or 5 people, one with glass Of beer in hand, one sitting on my windowsill, much bad language; Mon 11/2 Fri 7/3 loud yelling o/s pub.

Recent instances of drunken disorderliness outside pub and my home:

One Jan evening. Two young girls fighting/swearing. When requested to go away, one told me "shut yer f ... ing face or I'll 'it yer, yer f ... ing old granny"

Sun 24/2 8.20pm, drunken customer, much swearing

Tue 4/3 Drunken man, shouting into the pub doorway.

Mon 10/3 4 drunken people, shouting, swearing, quarrelling o/s my front door. On asking them to go away, one woman said 'No, go call the police'. So I did. Incident No. 777S 100308. The officer confirmed he could hear the row over the phone.

Instances of piles of vomit immediately outside my front door (which is about 2 feet away from the pub door, cleared up by Landlady:

Sun 11/11, Mon 31/12

Example of one Saturday (2/2/08) becoming more and more typical:

4-10 pm - c 8pm. Alternate very loud customer noise and music audible in downstairs rooms.

8.15 - 8.25 pm Dog barking loudly o/s my front door. Opened it to investigate and found Landlady's partner in the pub doorway and a chap (dog owner?) with glass of wine in hand leaning against my wall/door and chatting to him. On my objecting, they all moved inside the pub. 8.30 - 9.40pm Loud music and customer noise in downstairs rooms with lots of shrieking young people outside my door c 9.35
9.40 - 12.00 Music audible everywhere incl. bedroom. Unable to sleep.

Analysis of noise nuisance and public disorder ref: The Horse & Jockey Pub.
Easter weekend: Fri 23/3 to Mon 24/3 2008

Friday: from 8pm to 11pm	Music with Repetitive Bass Beat (RBB) downstairs in my living room and kitchen) and in Bedroom. Managed to fall asleep C 11pm
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Saturday: from 1.20 - c3.00 pm	Intermittently, TV noise in living room and kitchen
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From 9pm - midnight	Music varying from quiet to loud plus RBB downstairs and in bedroom. Unable to sleep through it.
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Plus, intermittently, loud customer noise downstairs.

- Sunday: A dreadful day with no peace at all for almost 9 hours
- from 2.15 - c 6pm Very loud customer noise (yelling, shouting, cheering, a football match?) downstairs. Also, in street outside my front door on three occasions, noisy customers smoking and drinking.
- From 6pm -c11.00pm Music varying from quiet to loud, downstairs and in bedroom plus customer noise downstairs and yelling outside the pub.
- Monday: from 5 - c6pm and 8-c9pm Loud RBB and 'droning' downstairs in kitchen and l/room.
- From 9,15- c 10.30+ pm. quieter droning with RBB. Managed to fall asleep through it.

7. Summary of Representations

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

West Mercia Police, Environmental Health & Fire Authority

No representation has been received from these.

Interested Parties.

Three letters have been received from local residents support the reviewing of the premise licence.

Five letters have been received from local residents supporting the DPS of the premises and against the review.

One letter was received against the review but contained no house number.

Two letters were received which were considered not to be relevant representations.

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. Letters from Interested parties
- 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.

Dear Mr Spriggs

As you requested of me I attach to this email:

- * Updated summarised diary of noise etc nuisance since the last submission to The Committee
- * A resubmission of my request for action against the premises licence of The Horse and Jockey. Including details of the events following the original hearing on 28/5/2008.

Also attached is

- * Mr Del Pinto's letter concerning pub nuisance since the date of the first application for a review. Mr Mainey will email you directly with his.

I would be grateful if you would arrange for Police transcripts/tape And our video evidence to be presented. Will we need to provide the means of showing the CCTV video or is that already available?

I also think it is essential for Victoria (Back from holiday?) and Aris to be present to confirm my statements - especially that my complaint against the H & J has never been vexatious. I am seriously disadvantaged if they are not.

I have not sent this lot to the Fire Brigade etc. I assume that that was not necessary.

Thank you for confirming that, whilst Mr Mainey and Mr Del Pinto wish to represent themselves, should they be prevented from doing so by work commitments, I may represent them.

Many thanks and best regards. Janna Roberts

APENDIX 2

Resubmission to the Licensing Authority of my request for action to be taken against Punch Tavern's premises licence for The Horse and Jockey pub at 9/10 New Street, Ross-on-Wye. By Mrs J Roberts of 8 New Street, Ross-on-Wye. Dated 1/6/2008.

My original request was for:

- * the premises music licence to be suspended until the pub was sound-proofed
- * the premises licence be endorsed to prevent:
 - * excessive customer noise inside and outside the pub, particularly by football fans.
 - * Customers drinking and smoking on the pavement outside the pub. Often joined by the landlady & family, smoking.
 - * Noisy customers using foul language in the pub, the garden and on the pavement outside the path.
 - * Drunken and disorderly behaviour by customers. Eg, fights and foul-mouthed abuse outside the pub and our homes; vomiting outside my front door.

I now request that the premises licence be rescinded on the above grounds plus that:

- * The pub is no longer run in a manner suited to a residential area.
- * Punch Taverns have proved themselves unable to control the effectiveness of the current Landlady and her partner either to manage the pub professionally and without nuisance to neighbours or to protect the welfare of residents' persons and property. I have no confidence, either, in their ability properly to control any future tenants.
- * The Licensees are demonising me to anyone who will listen thereby promoting customer aggression towards me; their and certain of the pub customers' attitude is unlikely to change and I remain at risk.

In evidence:

- * The report of the Ross Station PC of the incident (no. S732512) that occurred on Wed 21/5/2008 which will confirm my statement that:

After an exceedingly noisy evening (inside the pub) since

APENDIX 2

7.70pm (a football match, I gather), I was driven from my bedroom at around 10.30 pm by really excessive noise that sounded like a herd of charging elephants but was, I believe, prolonged and heavy table-banging. Standing at my front window, I saw one man running up and down and in and out of the pub, yelling and swearing. Then at least three young men (apparently drunken football fans) possibly more, erupted from the pub and started shouting and hammering with their fists on my window.

One shouted "you've ruined this pub".

Then came the sound of smashing glass which I thought meant that they were trying to break in through the window but in fact was beer glasses being smashed on the pavement beneath it.

They ran away before the Police could get here. Whilst the PC was recording this incident in my sitting room, the pub barman was sweeping up the broken glass outside. My neighbour Mr Neil Mainey had joined me and has my very real gratitude for his kind support.

The Police Constable advised me to set up a CCTV camera, to record any further attacks upon me, which was done immediately by Mr Mainey.

The CCTV video records behaviour that should shame any pub manager. It is my submission that the Horse & Jockey is catering for the evening pub trade that the town centre pubs, (in my experience, professionally managed) refuse to serve.

Mr Mainey's detailed diary after the 28th May details the CCTV evidence except, of course, where the smoking shelter is mentioned. The CCTV sound/vision evidence shows or illustrates:

The regular pub customer who deliberately woke me on Wed 28/5 (the date of the hearing) by ringing my doorbell. The video also records the revoltingly foul-mouthed description he used for me. The Landlady will be able to name him for me so that I may make formal complaint to the Police.

The inability of Punch Taverns to ensure that the Landlady and her partner comply with instructions given to them and the contempt with which those instructions are treated by the Landlady and her partner.

The mendacity of the Landlady and her partner particularly in protesting that there is no bad behaviour or if there is, it is not by their customers.

The contemptuous attitude of some of the customers towards me, in my view fuelled by the Landlady's partner's attitude towards me.

Presentation of evidence:

May I request the Licensing Authority, please, to obtain the Ross Police Constable's report of the 21st May and a recording of my 999 call to the police. Both will illustrate the severe distress and fright this incident caused me.

In addition, may our video recording of events since the hearing please also be shown in illustration of Mr Mainey's submission. It should take less than 10 minutes.

The statement of submission by Mrs Harmer is a clear attempt at character assassination rather than any real defence. May I therefore please request that Victoria Woodland (Licensing) and Aris Trezins (Environmental Health) be present (or provide a written submission) to confirm:

- * my many and patient past attempts to solve the noise problem in a civilised fashion and without any personal animosity towards the licensees.
- * That my complaint against the licensee was not vexatious.
- * The many occasions and mendacious excuses used by the Landlady's partner for his failure to stay within the noise limit set informally with Punch Taverns in July. Eg, "A customer must have switched on the speaker" - this in relation to a speaker that he had already agreed to disable.
- * My increasingly frequent comments on the new type (since this tenancy) of nuisance of customer noise penetrating my walls. eg, yelling and shouting.
- * The combination of the leaving of Sally Williams and Gareth from Mr Trezins and Punch Taverns staff (respectively) occurred before the results of the acoustic tests organised by Punch were produced.

Mrs Williams was having great difficulty in contacting Ms Banks (replacement for Gareth) and Mr Trezins at that time had no replacement for Mrs Williams.

Those two events (plus my own illness) meant that no action was taken nor progress made in the matter of the internal noise nuisance from roughly November to February

of this year. And no agreement with Punch or the Landlady was ever concluded and formalised.

May I also request that Mr Del Pinto and Mr Mainey be allowed to address the Committee on the subject of noise nuisance in the pub garden since that is another element of unprofessional pub management that has not yet been aired in chambers.

Diary of nuisance caused by the Horse & Jockey pub landlords and customers since the date of the first application for a review of the premises licence. By Mrs J Roberts. Dated 1/6/08.

Note: there is so much that only the worst/lengthiest incidents are recorded here but my original notes exist if required.

1. Music penetrating walls of my living room and kitchen at loud or very loud volume. Where it also penetrated my 1st floor bedroom preventing sleep '(B)' will follow the date

Mon 31/3(B) Fri 11/4(B) Sat 12/4 Sun 13/4(B) Mon 4/4(B)
 Tue 15/4 Wed 16/4 Fri 18/4(B) Thu 24/4(B) Fri 25/4
 Sat 26/4(B) Sun 27/4 Sun 27/4 Sat 3/5(B) Fri 9/5(B)
 Sat 10/5 Sat 17/5(B) Sun 18/5 Mon 19/5(B) Tue 0/5(B)
 Fri 23/5(B) Sat 24/5 Sun 25/5

2. Customers outside the pub, smoking. Where the customers were seen to be drinking also, '(D)' follows the date. There was usually more than one occasion, per day, recorded in my notes.

Mon 31/3(D) Tue 1/4 Fri 11/4 Sat 12/4 Sun 13/4 TUE 5/4
 Wed 16/4 Sat 19/4 Wed 30/4(D) Sat 3/5 Fri 9/5 Sat 0/5
 Mon 26/5 **Note: Police called 30/4. I No. 700s300408.**

3. one or more of the Landlady, her partner, his daughter, his elder grandson and the barman outside the pub smoking. Where customers were doing the same, the dates will co-incide with 2 above and are highlighted, here, in red.

Fri 11/4 Sat 12/4 Sun 13/4 Tue 15/4 Tue 13/5

4. Loud shrieking, yelling, sometimes foul language penetrating the walls of my living room and kitchen.

Fri 11/4 Sat 19/4 Sun 27/4 Wed 30/4 Sun 27/4 Sat 10/5
 Sun 11/5 Wed 21/5 Fri 23/5 Sun 25/5

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5. Very noisy behaviour outside the pub and my house. Where fights or foul language apply '(F) follows the date. similarly, where police were called, (P)

Tue 11/4 Sat 19/4 Wed 30/4(P) Sat 3/5 Fri 9/5 Wed 21/5 F) (P)

Wed 28/5 Fri 30/5 . Incident No for 21/5 is S732512

HDC Licensing Section
County Offices
PO Box 233
Bath Street
Hereford
HR1 2ZF

Jim Del Pinto
12 New Street
Ross-On-Wye
HR9 7DA

1/6/2008

BY E-MAIL

Dear Mr Spriggs

I understand from Janna Roberts that you require from her, myself and Neil Mainey details of any nuisance caused by the Horse & Jockey pub since the time of the Application for a review of the licence.

I have witnessed much daytime/early evening nuisance in the form of noisy people smoking and sometimes also drinking outside the pub. I have not kept a diary but can confirm the date of 30/4/08 when I rang Janna Roberts at 8.34 pm to tell her that the instructions from Helen Banks (Punch Taverns) to the Landlady to prevent this nuisance was clearly having no effect since a crowd of what appeared to be football fans was smoking and drinking outside the pub.

The shouting, shrieking, swearing and TV noise nuisance in my garden also continued.

I would like, if possible, the opportunity to put my complaints to The Review Committee, circumstances having prevented that so far.

Yours sincerely

Jim Del Pinto

J Del Pinto

Horse and Jockey License Review, New Street, Ross-on-Wye

Further submission made in support of the Application made by Mrs Janna Roberts to review the license of the Horse and Jockey pub 9&10 New Street Ross on Wye, Herefordshire. HR9 7DA

By

Mr Neil Mainey 7 New Street, Ross on Wye, Herefordshire. HR9 7DA

Dear Sirs,

I am unfortunate to live in extremely close proximity, less than 5 meters door to door, to the Horse & Jockey pub in New Street, Ross on Wye. The behavior of the customers and staff has got to the point where I decided that keeping a diary of events was the only way to really explain how antisocial the behavior of some customers and staff has become.

I appreciate that people are at liberty to smoke and I do not personally have a problem with this, however since the introduction of the smoking ban in Britain groups of people have been congregating outside the front of the Horse & Jockey taking their drinks with them to enjoy a cigarette, despite there being a shelter at the back. This is causing an ongoing nuisance of cigarette smoke entering our house via vents and windows if open and forcing us to listen to vulgar language into the early hours of the morning. This disturbs our peace and causes an ongoing annoyance. We were informed that customers would no longer be able to congregate outside to smoke but the staff do very little, if anything, to enforce this. The majority of the time the smoking and drinking outside the front of the pub goes unchecked.

Drinking in the smoking shelter to the rear on occasion goes on into the early hours of the morning, the security light facing the rear of our house causes us a disturbance. During premium sport events such as the FA cup the noise and foul language from the smoking shelter renders our garden unusable. I would like this matter to be addressed in the review if possible. I don't believe that my neighbours' children in gardens adjoining should be subjected to this. I feel strangely lucky that England did not qualify for Euro 2008 such is my concern over the noise level and antisocial behavior displayed by some customers of the pub during similar events.

More recently however things have taken a severe turn for the worse when the general bullying that my neighbour Mrs Roberts has to suffer boiled over into a group attack aimed at her by a gang of yobs who had been drinking all evening watching football. During the attack on Wednesday 21 May 08, Janna's windows were banged on, she was yelled, sworn at and a glass was thrown which smashed on the pavement outside her house. The police were called and attended the scene. PC Thomas from Ross police station advised Janna to install CCTV as a means of security, went into the pub to caution the licensee and advised us that he would be reporting the matter to the licensing officer at Herefordshire & Worcester Police.

The effects of this attack were severe on Janna and have caused her deep trauma.

I am extremely disturbed by such cowardly acts of aggression against a senior member of our community who lives on her own. Janna has no means of defending herself

against an angry rabble of drunken hooligans who have been incited by the licensee, partner and staff into nothing short of acts of hatred.

At no point do I feel that Janna has been given the respect she deserves, on the contrary she is treated like an inconvenience and with contempt. Some customers of the Horse and Jockey treat her likewise and even have been known to take matters into their own hands and carry out acts of revenge.

The vocalised belief expressed by the staff and some customers of the Horse & Jockey is that Janna is somehow to blame herself for the torment she has to suffer because she chose to buy a house next door to a pub. I have never witnessed Janna carrying out any act on the pub, licensee or customers which could be considered aggressive. The aggression is all one sided and comes as a reaction from Janna trying to sort out the problem of noise and antisocial behavior.

Bullying a pensioner who is 70 in October and who lives on her own is cowardly and I would like to see it end. Below I have diarised some, but not all of the events observed backed up with CCTV video since 28 May 2008.

I believe my diary and associated video to be an accurate depiction of the Horse & Jockey. Even though the camera has only been installed for 11 days it has clearly captured many instances of antisocial behaviour such as shouting, swearing, unchecked smoking and urinating in the street outside. This is just a snapshot of what we, Mr DelPinto, Mrs Roberts and other neighbours have to put with long term.

Diary of events 27 April 08 to 8 June 08

Date	Time	Noted
Sun 27 April 08	From 18:00 onwards	Customers and staff smoking outside front door; odour from smoke and noise ongoing until closing time
Wed 30 April 08	Approx 19:30 onwards	Football clearly audible from television in smoking shelter at back beer garden including shouting and antisocial language
Sat 3 May 08	20:00 onwards	Groups sporadically gathering outside front of pub on street, smoking and making noise; music from within pub notably audible when front door used by customers.
	23:30	Music still clearly audible along with customers smoking and talking at the front
	00:40	Group of three customers (2 females/ 1 male) waiting for taxi outside front of pub, singing extremely loudly and smoking; when asked to stop by myself, they became aggressive, shouting and swearing and acting in an extremely anti-social manner - eg "Let her fucking sing" followed by "Why don't you fuck off you wanker" - coupled by intimidating behaviour and gestures from the male.

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Sat 10 May 08	20:00	Groups sporadically gathering outside front of pub on street, smoking and making noise.
Sun 11 May 08	16:00 onwards	Extreme noise from football match audible from back beer garden smoking shelter ie television volume, shouting "fucking wanker" and "fucking cunt" in response to the football along with cheering and young customers singing "championi" at unacceptable noise levels.
Tue 20 May 08	19:30	Stu standing in H&J porch at front of pub smoking and talking to customers.
Wed 21 May 08	19:30 onwards	Extremely loud noise emanating from within pub and beer garden smoking shelter at rear of pub due to football Gangs of customers almost constantly gathering to smoke and drink outside front of pub watching football through the front window
	21:00	Loud shouting and swearing coming from smoking shelter in beer garden
	22:00	Large gang of customers smoking outside which Jan tried to disperse – however to greater extent, customers ignored her. Customers running over the road and urinating in New Street car park and to rear of houses backing onto the car park, followed by extremely loud singing and banging on interior pub tables clearly audible from inside our house. At the same time some youths were shouting "Fucking 'have it'" in the street at the top of their voices.
	22:50	Very noisy gang of young customers exiting pub shouting and swearing at top of voices banging on windows of number 8 New Street whilst shouting 'Fuck off' extremely aggressively – and 'You are ruining this pub' – before smashing a glass on pavement outside the front door of number 8, in an intimidating and anti-social manner. PC Thomas from Ross Police Station attended and advised that the licensing section of Hereford and Worcester Police would be informed and that he would caution the H&J about their customers' behavior.
Wed 28 May 08 (Camera installed)	18:20	Person smoking outside observed by Stuart who makes no attempt to stop it.
	23:45	Group of 3 leaving one says "ssshhhh!" pointing to Janna's house, man on crutch responds and says loudly "Ah fuck

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		her the stupid old cunt!" referring to Janna.
	00.03	Man with Crutch arrives back and rings Janna's doorbell whilst walking past with his dog. Janna informed me the following day that this disturbed her sleep and was menacing
	00.30	Group including licensee arrives back to Horse and Jockey in taxi. They are locked out and have to shout through the letter box to be let in. They all join in la loud group "SSSHHHH" and then one shouts up in the direction of Janna's upstairs window "be quiet, you don't want to disturb Janna".
Fri 30 May 08	00:08	6 customers smoking outside, along with Stuart, talking loudly enough to disturb me.
Sat 31 May 08	21:15	Cellar opened and abandoned in dark creating a danger to the passing public for a while
	00:10	Person smoking in doorway and flicking butt outside Janna's house before going back in.
	02:30	People arriving, knocking on door and shouting through letter box and up at house to be let in. They get in at 02:47
Mon 2 Jun 08	22:37	Man leaving so drunk he could hardly stand
	22:49	Person smoking in doorway of Horse & Jockey then loud shouting "rraaaaahh!" followed by loud swearing. Group then leaves to get into a taxi discarding cigarette butt in the street and saying "there are no ashtrays outside because of these fuckers".
Wed 4 Jun 08	01:40	People still drinking in smoking shelter
Fri 6 Jun 08	00:10	Group of teenagers, one known by me personally to be 16years old, leaves Horse & Jockey with drinks in hand
	02:30	People still drinking and talking loudly in smoking shelter
Sat 7 Jun 08		I was informed by 16 year old known to me personally that underage youths including herself now regularly drink in the Horse & Jockey and that they are not asked by the bar staff for ID
	21:19	2 people standing outside Horse & Jockey smoking, drinking and swearing outside the word "cuntish" was heard being spoken loudly to describe someone.
	21:22	2 More males smoking and drinking outside discarding cigarette butts in on pavement

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	21:25	2 More come out of pub to smoke
	21:49	4 Persons smoking outside and talking loudly
	22:18	4 Persons come outside doorway to smoke. One youth goes off to urinate into a pint glass in the street, witnessed by my neighbour, before coming back to show off how much he had managed to produce to his friends saying "look lads – lemonade" "I thought ooh I thought it might fucking tip over if I carry on" and "there's nearly a pint there". This glass is put on the ground outside the pub and left. Another male with them then appears to be leaving to urinate in the street also.
	22:29	Groups of people now standing outside doorway smoking constantly
	23:09	Group of young people arrive at pub shouting in street
	23:44	Another group of young people arrive at pub with drinks in hand shouting
	23:47	Person comes outside pub to talk on mobile phone and is asked to move away from front
	23:54	2 More young people arrive at the pub shouting loudly "Stupid Cunt!"
	23:57	Group of 6 from inside pub congregate to smoke outside, spitting and swearing loudly "stupid twat". They talk and one sings "let's go fucking mental". They are told by the barman to be quiet, but not to stop smoking
	00:01	The group are allowed back in and the door is closed and locked
	00:06	Group leave shouting and swearing

Submitted by,

Neil Mainey
7 New Street, Ross on Wye, Herefordshire. HR9 7DA

APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF 'THE MARCHES RESTAURANT, GROUND FLOOR AND BASEMENT, 26-29 UNION STREET, HEREFORD, HR1 2BT' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Hereford City

1. Purpose

To consider an application for a new premises licence in respect of The Marches Restaurant, Ground Floor and Basement, 26-29 Union Street, Hereford.

2. Background Information

Applicant	Joseph Thachettu	
Solicitor	Not represented	
Type of application: New	Date received: 15/05/08	28 Days consultation 12/06/2008

The advertisement for the premise has been seen and is accepted.

3. The Application

The application requests are as follows: -

Films	18.00 – 21.00
Live Music	18.00 – 21.00
Recorded Music	07.00 – 24.00
Provision of late night refreshment	23.00 – 02.00
Supply of alcohol	11.00 – 24.00

4. Summary of Application

The application includes an application for late night refreshment provision until 02.00am. All other late night refreshment premises have a terminal hour of 01.30am.

5. Request for Conditions to be included.

West Mercia police authority have requested the terminal hour of 0130 for late night refreshment.

Environmental Health have requested a number of conditions, which can be found in the background papers.

6. 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, but do request a condition regarding late night refreshment.

Environmental Health

The Environmental Health Officer has made representation and recommends conditions regarding the provision for late night refreshment on the grounds of prevention of public nuisance.

Highway Authority

Whilst not a responsible authority this authority has commented upon the application.

Fire Authority.

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

Interested Parties.

The Local Authority has received one letter of representation from an interested party in respect of the application.

7. Issues for Clarification

Why the applicant wouldn't wish to accept the representations made by Environmental Health and the West Mercia Police Authority?

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: -

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.

10. Background Papers

- a. Environmental Health & Trading Standards Comments

- b. West Mercia Comments.
- c. Application Form
- d. Location plan

Background papers are available for inspection in the Council Chamber, Town Hall, 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 VARIATION OF A PREMISES LICENCE IN RESPECT OF 'GOLDEN GALLEON FISH & CHIPS, 61 COMMERCIAL ROAD, HEREFORD HR1 2BP.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Hereford City

1. Purpose

To consider an application for a variation of a premises licence in respect of Golden Galleon Fish & Chips, 61 Commercial Road, Hereford.

2. Background Information

Applicant	Mr Harjinder Singh	
Solicitor	PCB Solicitors	
Type of application: Variation	Date received: 6/05/08	28 Days consultation 03/06/2008

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

3. Current Licence

The current licence allows: -

Provision of late night refreshment 23.00 hrs – 01.30 hrs

Non standard timings are: -

Closed on Christmas Day.

Open from 10:00 on New Years Eve to 01:30 the morning following New Year's Day.

4. Summary of Application

There is no application to change the licensable activities shown on the premise licence. However the application requests to extend the hours of opening for late night refreshment..

The hours applied for are, Monday – Thursday 23.00 – 02.00
Friday – Sunday 23.00 – 04.00

Seasonal variations are requested for Christmas Eve and New Years Day (an additional 2 hours) and New Years Eve (an additional 4 hours.)

5. Summary of Representations

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

West Mercia Police

Have representation to make in relation to the application and can be found in the background papers.

Environmental Health

The Environmental Health Officer has made representation that the application be refused on the grounds of the prevention of public nuisance, copy in background papers.

Highway Authority

Whilst not a responsible authority this authority has commented upon the application.

Fire Authority.

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

Interested Parties.

The Local Authority has received letters of representation in respect of the application, from interested parties and are contained in the background papers.

6. Issues for Clarification

This Authority has not requested any clarification at this time.

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: -

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.

10. Background Papers

Background papers are available for inspection in the Council Chamber, Town Hall, 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 A NEW ADULT GAMING CENTRE PREMISES LICENCE & VARIATION OF PREMISE LICENCE 'SHIPLEYS, 38 EIGN GATE, HEREFORD, HR4 0AB.' – GAMBLING ACT 2005

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Hereford City

1. Purpose

To consider an application for a new adult gaming centre premises licence and variation of a premise licence in respect of Shipleys, 38 Eign Gate, Hereford, HR4 0AB.

2. Background Information

Applicant	E & J Investments Ltd	
Solicitor	Roger Etchells (Chartered Surveyor)	
Type of application: New/Variation	Date received: 2/05/08	28 Days consultation 30/05/08

3. New Licence Application

The application for a new licence has received representations from the Licensing Authority. It is therefore now brought before the sub-committee for determination. The matter was adjourned at a previous meeting on the 16 April 2008 in order for the advertisement to be re-advertised to comply with the requirements. The advert has been seen and is correct.

4. Summary of Application

The premise currently holds an Adult Gaming Centre premise licence which was granted under grandfather rights on 1 September 2007 when the Act commenced.

The application applies to split the current premise into two sections in order to allow two adult gaming centres within the premise.

5. Summary of Representation

Copies of the representation can be found within the background papers.

Responsible Authorities

All have no representation to make in relation to the application with exception of the Licensing Authority.

Interested Parties

No representation has been received from any interested party.

6. **Attaching of conditions to a licence**

The Gambling Act under Section 167 and 168 provides Mandatory and Default conditions to be attached to different categories of premise licences. In respect of an Adult Gaming Centre these are: -

Mandatory conditions attached to every premises licence

- The summary of the terms and conditions of the premises licence issued under section 164(1)(c) of the 2005 Act shall be displayed in a prominent place within the premises.
- The layout of the premises shall be maintained in accordance with the plan.
- The premises shall not be used for—
 - (a) the sale of tickets in a private lottery or customer lottery, or
 - (b) the sale of tickets in any other lottery in respect of which the sale of tickets on the premises is otherwise prohibited.

Mandatory conditions attached to adult gaming centre premises licences

1. A notice stating that no person under the age of 18 years is permitted to enter the premises shall be displayed in a prominent place at every entrance to the premises.
2. No customer shall be able to access the premises directly from any other premises in respect of which a licence issued under Part 8 of the Act, or a permit issued under Schedule 10, 12 or 13 to the Act, has effect.
3. Any ATM made available for use on the premises shall be located in a place that requires any customer who wishes to use it to cease gambling at any gaming machine in order to do so.
- 4.—(1) No alcohol shall be permitted to be consumed on the premises at any time during which facilities for gambling are being provided on the premises.
(2) A notice stating the condition in sub-paragraph (1) shall be displayed in a prominent place at every entrance to the premises.

7. There are no default conditions attached to an Adult Gaming Centre.

8. Section 169 allows the licensing authority to impose or exclude a condition or conditions onto or from a licence. It states that: -

- (1) Where a licensing authority issue a premises licence they may—
 - (a) attach a condition to the licence;
 - (b) exclude a condition that would otherwise be attached to the licence by virtue of section 168. (default conditions)
- (2) A condition attached to the licence under subsection (1)(a) may, in particular, address a matter addressed by a condition excluded under subsection (1)(b).
- (3) A condition attached to the licence under subsection (1)(a) may apply in relation to the premises generally or only in relation to a specified part of the premises.
- (4) A licensing authority may not attach a condition to a premises licence which prevents compliance with a condition of the operating licence which authorises the holder to carry out the activity in respect of which the premises licence is granted.

The mandatory conditions under Section 167 and the default conditions under Section 168 have been laid down by the Secretary of State in the 'Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007'.

9. **Licensing Authorities Function**

Section 153 of the Gambling Act 2005 states: -

Principles to be applied

(1) In exercising their functions under this Part a licensing authority shall aim to permit the use of premises for gambling in so far as the authority think it—

(a) in accordance with any relevant code of practice under section 24,

(b) in accordance with any relevant guidance issued by the Commission under section 25,

(c) reasonably consistent with the licensing objectives:

(i) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,

(ii) ensuring that gambling is conducted in a fair and open way, and

(iii) protecting children and other vulnerable persons from being harmed or exploited by gambling.

and

(d) in accordance with the Herefordshire Council - Statement of Principles – Gambling Act 2005.

(2) In determining whether to grant a premises licence a licensing authority may not have regard to the expected demand for the facilities which it is proposed to provide.

10. **Options: -**

There are a number of options available to committee

Any grant would be subject to the mandatory conditions and to any condition that Committee, at their discretion, attach under Section 169

The options available are

- Grant both the application for the new licence and the variation of licence
- Grant the new application but refuse the variation application
- Grant the variation but refuse the new application
- To reject both applications

11. **Background Papers**

- a. Representation
- b. Application Form
- c. Site Plan

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

NOTES

Relevant Extracts from the Gambling Commission – Guidance to Licensing Authorities**Mandatory conditions attached to all premises licences**

9.25 The following mandatory conditions will apply to all premises licences:

- a summary of the terms and conditions of the premises licence must be displayed in a prominent place on the premises;
- the layout of the premises must be maintained in accordance with the plan that forms part of the premises licence;
- National Lottery products may not be sold on the premises; and
- there can be no direct access between one premises licensed under the Gambling Act 2005 and another premises licensed under the Gambling Act 2005 with the following exceptions:
 - between bingo premises and alcohol-licensed premises/clubs with a club gaming or club gaming machine permit/FECs and tracks;
 - between tracks and alcohol-licensed premises/clubs with a club gaming or club gaming machine permit/FECs/betting premises and bingo premises; and
 - between FECs and alcohol-licensed premises/bingo halls/clubs with club gaming or club gaming machine permit and tracks.

Conditions that may be imposed or excluded by licensing authorities

9.26 Section 169 of the Act gives licensing authorities:

- the ability to exclude from premises licences any default conditions that have been imposed under section 168; and
- the power to impose conditions on the premises licences that they issue.

9.27 Licensing authorities should bear in mind their duty to act in accordance with the principles set out in section 153. Since they should aim to permit the use of premises for gambling, they should not attach conditions that limit the use of premises for gambling except where that is necessary as a result of the requirement to act:

- in accordance with this guidance, the Commission codes of practice or the licensing policy statement; or
- in a way that is reasonably consistent with the licensing objectives.

Conversely, licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through the use of conditions.

9.28 Conditions imposed by the licensing authority must be proportionate to the circumstances which they are seeking to address. In particular, licensing authorities should ensure that the premises licence conditions are:

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

9.29 Licensing authorities should note that it is the Commission's view that the conditions necessary for the general good conduct of gambling premises will be those set as default and mandatory conditions by the Secretary of State. Therefore a pool of

additional conditions published by the Commission will not be necessary. Where there are specific risks or problems associated with a particular locality, or specific premises, or class of premises, a local authority will be able to attach individual conditions to address this. That will be a matter for them in the light of local circumstances.

- 9.30** The licensing authority should take decisions on individual conditions on a case-by-case basis, although this will be against the background of any general policy set out in this guidance or their own licensing policy statement.

Conditions that may not be attached by licensing authorities

- 9.31** Licensing authorities need to be aware that the Act sets out certain matters that may not be the subject of conditions. The relevant sections are:
- section 169(4), which prohibits the authority from imposing a condition on the premises licence which makes it impossible to comply with an operating licence condition;
 - section 172(10), which provides that conditions may not relate to gaming machine categories, numbers, or method of operation;
 - section 170, which provides that membership of a club or body cannot be required by attaching a condition to the premises licence (the Act specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and
 - section 171, which prevents an authority imposing conditions in relation to stakes, fees, winnings or prizes.

Meaning of premises

- 7.11** In the Act, 'premises' is defined as including 'any place'. Section 152 therefore prevents more than one premises licence applying to any place. But, there is no reason in principle why a single building could not be subject to more than one premises licence, provided they are for different parts of the building, and the different parts of the building can reasonably be regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, track, or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about sub-divisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.
- 7.12** In most cases the expectation is that a single building/plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean that 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.

- 7.13** With the exceptions of the non-gambling area of the regional casino, bingo clubs, tracks on race-days and licensed family entertainment centres, children will not be permitted to enter licensed gambling premises. Therefore businesses will need to consider carefully how they wish to configure their buildings if they are seeking to develop multi-purpose developments.
- 7.14** Licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:
The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also that they are not permitted to be in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling where they are prohibited from participating.
Entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not 'drift' into a gambling area.
- 7.15** The proper application of section 152 means that different premises licences cannot apply in respect of single premises at different times. There is no temporal element to a premises licence. Therefore, premises could not, for example, be licensed as a bingo hall on week days and a betting shop at weekends.

Division of premises and access between premises

- 7.16** An issue that may arise when division of a premise is being considered is the nature of the unlicensed area from which a customer may access licensed gambling premises. For casinos, bearing in mind the wide definition of a street, access might be from a foyer or other area which the public might enter for purposes other than gambling. The precise nature of this public area will depend on the location and nature of the premises. Licensing authorities will need to consider whether the effect of any division is to create a machine shed-type environment with very large banks of machines, which is not the intention of the access conditions, or whether it creates a public environment with gambling facilities available if desired. Licensing authorities should, in particular, remember that where they have concerns about the use of premises for gambling, these may be addressed through licence conditions.
- 7.17** The Gambling Act 2005 (Mandatory and Default Conditions) Regulations⁵ set out the access provisions for each type of premises. The broad principle is that there can be no access from one licensed gambling premises and another, except between premises which allow access to those under the age of 18. Under-18s can go into family entertainment centres, tracks, pubs and some bingo halls and clubs. So access is allowed between these types of premises only.
- 7.18** It should be noted that the Mandatory and Default Premises Licence Regulations define street as 'including any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping malls) whether a thoroughfare or not'. This is to allow access, for example, to casinos from hotel foyers.
- 7.19** There is no definition of 'direct access' in the Act or regulations. However, it could be said that there should be an area separating the premises concerned (eg a street or

cafe), which the public go to for purposes other than gambling, for there to be shown to be no direct access.

7.20 The relevant access provisions for each premises type is as follows:

Adult gaming centres

No customer shall access the premises directly from any other licensed gambling premises.

The Gambling Act 2005

Section 152 states: -

(1) A premises licence—

(a) may not authorise the use of premises for activities of more than one of the kinds specified in section 150(a) to (e) (subject to sections 172 to 174 and subsection (2) below), and

(b) may not be issued in respect of premises if a premises licence already has effect in relation to the premises

