

A G E N D A

Regulatory Sub Committee

Date: **Wednesday, 13th August, 2008**

Time: **10.00 a.m.**

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

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

For any further information please contact:

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Herefordshire Council

AGENDA

for the Meeting of the Regulatory Sub Committee

To: Councillors PGH Cutter, JW Hope MBE and P Jones CBE

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. PRELIMINARY POINT IN RESPECT OF APPLICATION FOR A PREMISE LICENCE 'ROCK 'N' ROOTS 2008, RYE MEADOW, MUCH MARCLE, HEREFORDSHIRE'

For the committee to determine whether the application for a premise licence for 'Rock 'n' roots 2008, Rye Meadow, Much Marcle, Ledbury, Herefordshire, (Field 4962) is a lawful application which they have power to determine.

1 - 4

6. APPLICATION FOR A NEW PREMISE LICENCE 'ROCK 'N' ROOTS 2008, RYE MEADOW, MUCH MARCLE, HEREFORDSHIRE.' 5 - 10

To consider an application for a new premises licence in respect of Rock 'n' Roots 2008, Rye Meadow, Much Marcle, Ledbury, Herefordshire, (Field 4962).

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.

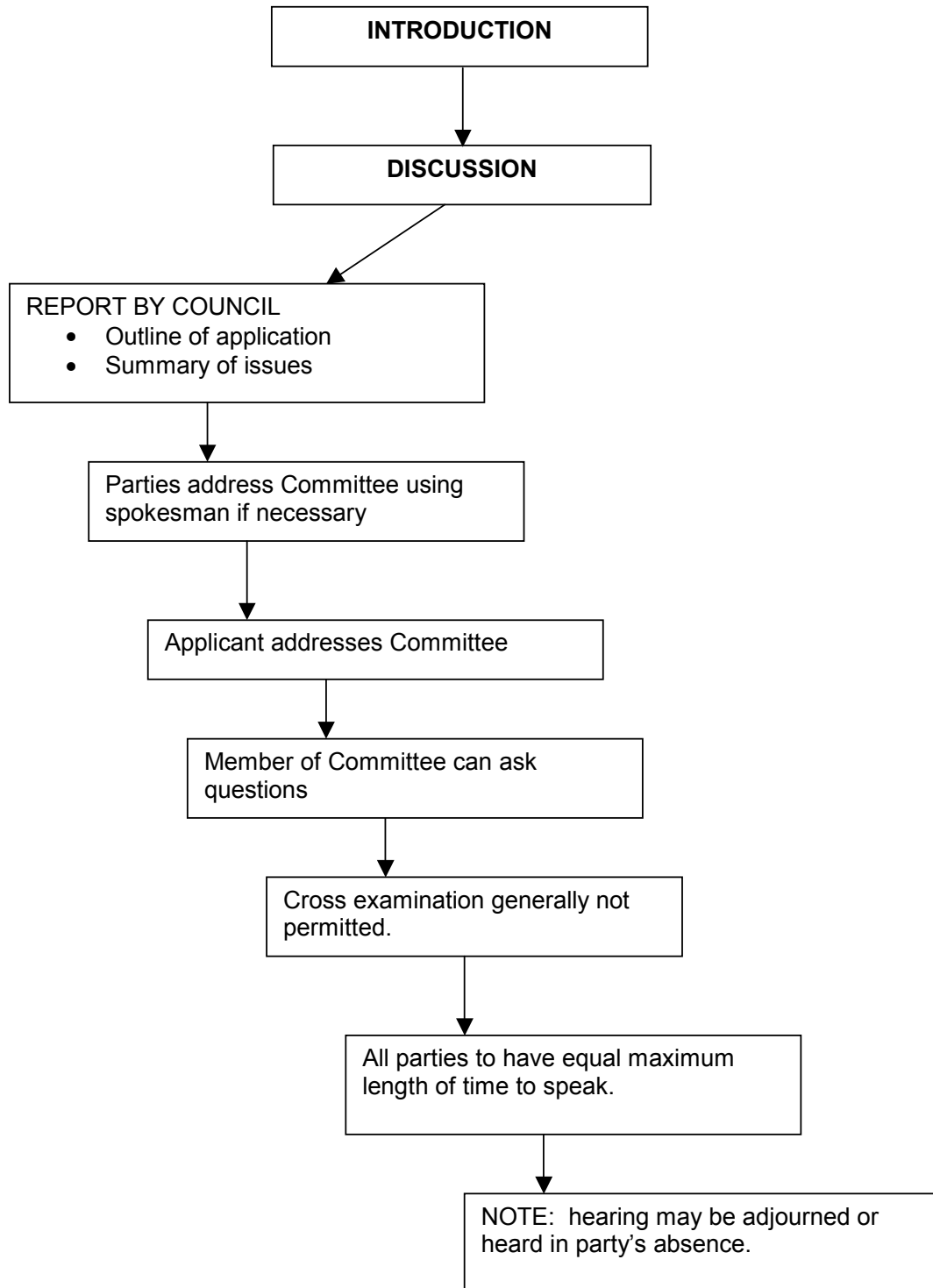
You should vacate the building in an orderly manner through the nearest available fire exit.

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



PRELIMINARY ISSUES CONCERNING THE APPLICATION FOR GRANT OF A PREMISES LICENCE IN RESPECT OF 'ROCK 'N' ROOTS 2008, RYE MEADOW, MUCH MARCLE, LEDBURY, HEREFORDSHIRE. (FIELD 4962)' - LICENSING ACT 2003

Report By: Acting Head Of Environmental Health And Trading Standards

Wards Affected:

Old Gore

1. Purpose

For the committee to determine whether the application for a premise licence for 'Rock 'n' roots 2008, Rye Meadow, Much Marcle, Ledbury, Herefordshire, (Field 4962) is a lawful application which they have power to determine.

2. Legislation – Licensing Act 2003

Section 18 states that the Licensing Authority only has power to determine an application for a premises licence where: -

- (a) is made in accordance with section 17, and
- (b) they are satisfied that the applicant has complied with any requirement imposed on him under Section 17 (5) of that section.

Section 17 (3)(b) states that any application must be submitted with a plan of the premises to which the application relates, in the prescribed form,

Section 17 (5) states that the Secretary of State must by regulations:-

- (a) require an applicant to advertise his application within the prescribed period -
 - (i) in the prescribed form, and
 - (ii) in a manner which is prescribed and is likely to bring the application to the attention of the interested parties likely to be affected by it;
- (b) require an applicant to give notice of his application to each responsible authority, and such other persons as may be prescribed, within the prescribed period.

3. Legislation – The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

Regulation 25 (Advertisement of applications) states:-

In the case of an application for a premises licence under section 17 the person making the application shall advertise the application:

- for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority, by displaying a notice,

- in all cases, prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises and in the case of a premises covering an area of more than 50 metres square, a further notice in the same form and subject to the same requirements every fifty metres along the external perimeter of the premises abutting any highway; and

(b) by publishing a notice:-

- in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the vicinity of the premises;
- on at least one occasion during the period of 10 working days starting on the day after the day on which the application was given to the relevant licensing authority.

Regulation 26 states: -

In the case of an application for a premises licence, the notices referred to in regulation 25 shall contain a statement of the relevant licensable activities which it is proposed will be carried on or from the premises.

Regulation 27 (Notice to responsible authority) states: -

In the case of an application for a premises licence under section 17 the person making the application shall give notice of his application to each responsible authority by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority.

4. **Facts**

The Licensing Authority accepted the application for the premise licence on 10 July 2008. The 28 day period for advertising the event commenced on 11 July.

Serving on Responsible Authorities

Whilst the Licensing Authority received the application no copy was served on the Police other than by the Licensing Authority some days later.

Site Notice

At 0830 hours on Wednesday 23 July 2008 the Licensing Officer attended the location subject of the application. Upon entering the site, 1 notice was displayed (appendix 1) and this notice stated the following licensable activities:-

- Live music
- Dancing
- Sale and Supply of Alcohol

The field has a public footpath crossing it and no notices could be found at either end of the footpath.

Newspaper Notice

An advertisement appeared in the Worcester Evening News on 21 July 2008. Enquiries made by Council staff with the newspaper have indicated that there is no circulation of the newspaper in the Much Marcle area.

Enquires at the local post office confirm that they do not sell the paper nor does any other shop within Much Marcle.

5. Committees Determination

It is for the Committee to decide whether they are satisfied that the applicant has complied with requirements imposed on him by the Act and the Regulations.

6. Options: -

There are a two options available to committee: -

- **To decide that the statutory requirements have been complied with and therefore to conclude that the Licensing Authority has power to determine the application**
- **To decide that the statutory requirements have not been complied with and therefore to conclude that the Licensing Authority has no power to determine the application.**

7. Background Papers

- a. Copy of Photograph of Notice Displayed on the Premises
- b. Copy of the advertisement displayed in the newspaper
- c. Copy of email confirming attempted delivery of application to the police authority on 14 July 2008.

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

APPLICATION FOR GRANT OF A PREMISES LICENCE IN RESPECT OF 'ROCK 'N' ROOTS 2008, RYE MEADOW, MUCH MARCLE, LEDBURY, HEREFORDSHIRE. (FIELD 4962)' - LICENSING ACT 2003

Report By: Acting Head Of Environmental Health And Trading Standards

Wards Affected:

Old Gore

1. Purpose

To consider an application for a new premises licence in respect of Rock 'n' Roots, Rye Meadow, Much Marcle, Ledbury, Herefordshire, (Field 4962).

2. Background Information

Applicant	Mr Michael Stephens, 42 New Road, Ammanford, SA18 3ES.	
Solicitor	N/K	
Type of application:	Date received:	28 Days consultation
New	11 July 2008	7 August 2008

3. New Licence Application

The application for a new premises licence has received representations from responsible authorities and interested parties. It is therefore now brought before the Regulatory Sub-Committee for determination.

4. Summary of Application

The application requests a time limited licence on a yearly basis between 21 August and 31 August.

The licensable activities applied for are: -

- Plays
- Films
- Indoor Sporting Events
- Live Music
- Recorded Music
- Anything of a similar nature to Live or Recorded Music
- Provision of facilities for making music
- Provision of facilities for dancing
- Anything Similar to the provision for making music and dancing
- Provision of late night refreshment
- Sale by Retail of Alcohol

5. The following hours have been applied for in respect of all the above (*Indoors and Outdoors*) and the sale by Retail of Alcohol (Both on & off premises): -

All days 09:00 – 00:00

6. The premise to be open to the public: -

All days 09:00 – 00:00

7. **Summary of Representations**

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

West Mercia Police

Have made a representation in relation to the application details of which can be found within the background papers.

Environmental Health

The Environmental Health Officer has made a representation regarding the application, details of this representation are also included within the background papers.

Fire Authority.

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

Interested Parties.

At the time of writing this report (4 August 2008) 13 representations from interested parties have been received in respect of the application.

8. **Issues for Clarification**

This Authority has not requested any clarification at this time.

9. **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 S.182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

10. **Options: -**

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

- Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003.
- Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it necessary for the promotion of the licensing objectives and add mandatory condition set out in the Licensing Act 2003.

- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premise supervisor
- To reject the application.

11. Background Papers

- a. Environmental Health & Trading Standards Comments
- b. Police Comments
- c. Interested Parties Comments
- d. Application Form
- e. 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.

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.

