

A G E N D A

Regulatory Sub Committee

Date: **Monday, 22nd December, 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 JW Hope MBE, P Jones CBE and A Seldon

Pages

1. ELECTION OF CHAIRMAN

To elect a Chairman for the hearing.

2. APOLOGIES FOR ABSENCE

To receive apologies for absence.

3. NAMED SUBSTITUTES (IF ANY)

To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.

4. DECLARATIONS OF INTEREST

To receive any declarations of interest by Members in respect of items on the Agenda.

GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS

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

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

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

5. APPLICATION FOR A REVIEW OF PREMISES LICENCE 'KING CHARLES II, 13 BROAD STREET, ROSS-ON-WYE, HR9 7EA' 1 - 8

To consider an application for a review of a premises licence in respect of 'The King Charles II, 13 Broad Street, Ross On Wye, HR9 7EA'.

6. APPLICATION FOR A NEW PREMISES LICENCE UNDER THE GAMBLING ACT 2005 'CORAL, BROAD STREET, HEREFORD' 9 - 14

To consider an application for a new premises licence in respect of Coral, Broad Street, Hereford.

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.

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The meeting venue is accessible for visitors in wheelchairs.

A public telephone is available in the reception area.

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- 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.

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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.

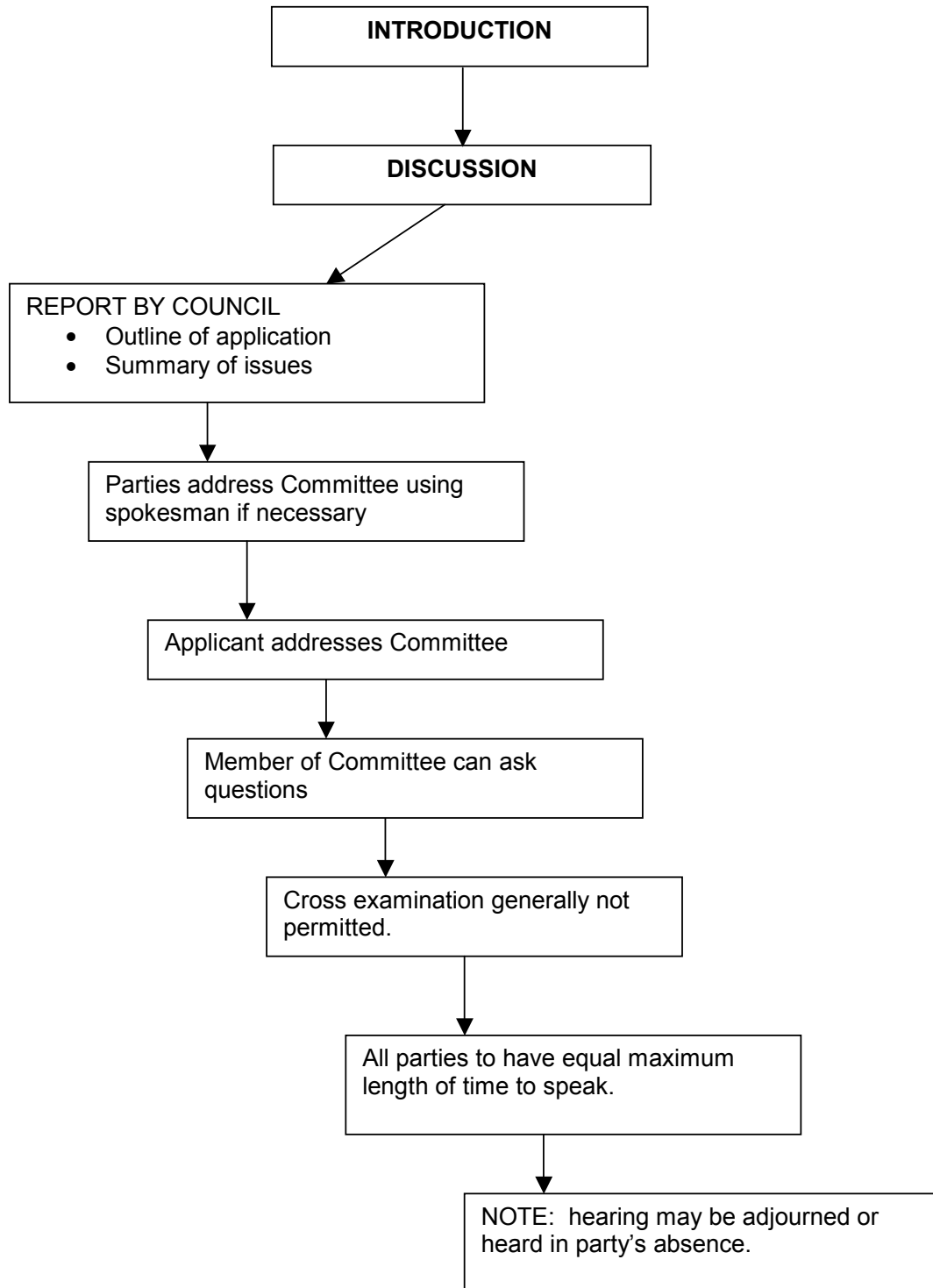
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You should then proceed to Assembly Point J which is located at the southern entrance to the car park. A check will be undertaken to ensure that those recorded as present have vacated the building following which further instructions will be given.

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Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

LICENCING HEARING FLOW CHART



APPLICATION FOR REVIEW OF A PREMISES LICENCE ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT OF 'KING CHARLES II, 13 BROAD STREET, ROSS ON WYE, HR9 7EA'.

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Ross on Wye

1. Purpose

To consider an application for a review of a premises licence in respect of 'The King Charles II, 13 Broad Street, Ross On Wye, HR9 7EA'.

2. Background Information

Applicant	Mrs Rowena CLARK 2 Willow Mews, 16a Broad Street, Ross on Wye, HR9 7EA	
Premise Licence Holder	Mr Andrew Gooding, King Charles II, 13 Broad Street, Ross On Wye, HR9 7EA	
Solicitor	Flint Bishop Solicitors, Derby	
Type of application: Review	Date received: 31/10/08	28 Days consultation 28/11/08

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 (the Council's Bath Street Offices).

3. Current Licence

The current licence allows: -

Provision of regulated entertainment (indoors)

Exhibition of film, indoor sporting events, a performance of live music, playing of recorded music, performance of dance.

Provision of regulated facilities (indoors)

Making music & dancing.

Sale by retail of alcohol (For sale both on and off the premises)

At the times shown: -

Monday-Wednesday: 10:00 - 00:00

Thursday-Saturday: 10:00 - 02:00

Sunday: 12:00 - 00:30

Late Night Refreshments (Indoors)

At the times shown: -

Monday-Wednesday: 23:00 - 00:00

Thursday-Saturday: 23:00 - 02:00

Sunday: 23:00 - 00:30

Opening Hours

At the times shown: -

Monday-Wednesday: 10:00 - 00:30

Thursday-Saturday: 10:00 - 02:30

Sunday: 12:00 - 01:00

Non-standard timings

The following non-standard timings apply to all the licensable activities listed above: -
New Year's Eve 10.00 to New Year's Day (terminal hour)

4. Summary of Application

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

- Prevention of Public Nuisance

5. The grounds for the review as stated by Mrs Clark are: -

1) PREVENTION OF PUBLIC NUISANCE

- a) Mrs Clark asks the committee if it could find a solution to curb the unsociable loud noise from drinkers and smokers outside in the garden of the King Charles until the early hours of the morning and to implement it.

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

Mrs Clark states that the current complaints started in about May 2007 whereupon she contacted the Council's Environmental Health Officer for assistance. She states that she lives only one garden away from the rear of the King Charles II and refers to a large recently constructed smoking shelter in the small back garden of the public house and that, at times, a television had been placed inside for customers. She alleges that she and neighbours were not consulted about this.

Mrs Clark states that the resultant noise generated in the garden causes her nuisance. She also states that she and neighbours cannot have their windows open on nights when the King Charles II is trading, and alleges that even double glazing does not keep the noise out. She comments that this year the beer garden seemed to be open only on Fridays, Saturdays and Sundays.

The noise is alleged to get louder and louder as the night goes on and comprises laughter, shouting, screeching, chanting and swearing. She estimates numbers of customers in the garden can be as high as 60 – 70.

She also mentions an externally located air conditioning unit which apparently 'thumps' on and off throughout the night.

Mrs Clark states that the Council's Environmental Health Officers visited on a number of occasions in 2007, alleges that they witnessed the noise themselves and therefore met with the holder of the premises licence, Mr Gooding.

She states that she kept a diary of the noise events from June to November 2007

and sent these to the Council's Environmental Health Officer at regular intervals.

She comments that one of the investigating Environmental Health Officers left the Council in October 2007 and that she decided to wait to see what would happen in 2008 before pursuing the matter further.

In the application for a review, Mrs Clark has included photographs of the garden and smoking shelter, copies of various correspondence with the Council as well as her log sheets for recording noise events.

The full copy of Mrs Clark's application is included in the background papers to this report.

7. Summary of Representations

West Mercia Police & Fire Authority

No representation has been received from these authorities.

Environmental Health

The Council's Environmental Health Officer has made a representation in support of the review of the premises licence. She cites a history of noise complaints and mentions that a retrospective planning application for the smoking shelter has been refused by the Council and will therefore have to be removed. She recommends two conditions to:

- a. prohibit the use of the rear external area between 11.30pm and 10.00am and
- b. to require a dispersion policy to be written and maintained to the satisfaction of the Environmental Health Officer.

Interested Parties

Three written representations have been received from adjacent local residents supporting the review of the premise licence and suggesting solutions.

Suggested solutions from these supporting representations include:

- i. turning the volume of music down so it cannot be heard outside,
- ii. relocate speakers,
- iii. double glaze and sound proof doors,
- iv. monitor noise levels,
- v. include an inner door to keep sound from escaping from within,
- vi. ban smoking outside the front door,
- vii. reduce opening hours, e.g. 12am close rather than 2am,
- viii. utilise door persons to disperse crowds on closing,
- ix. notice to customers requesting noise is kept down,
- x. increase camera surveillance, and
- xi. better joint working with local police to help disperse at closing.

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

8. **Committee's 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;

For this purpose the conditions of the licence would be modified if any of them were to be 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.

APPLICATION FOR NEW PREMISES LICENCE '50/51 BROAD STREET, HEREFORD.' – 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 premises licence in respect of 50/51 Broad Street, Hereford.

2. Background Information

Applicant	Coral Racing Limited	
Solicitor		
Type of application:	Date received:	28 Days consultation
New	12/8/08	9/9/08

3. New Licence Application

The application for a new licence under the Gambling Act has received a representation from an interested party. It is therefore now brought before committee to determine the application.

4. Summary of Application

The application is for a premise licence for Betting (Other). This would permit the premises to be used as a Licensed Betting Shop.

5. Summary of Representation

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

Responsible Authorities

'Connexions – Hereford' have made a representation. They are the designated authority for protecting children and other vulnerable persons.

Interested Parties.

None made.

6. Issues for Consideration

Connexions have sent an emailed representation to the Licensing Authority.

They express their concern that there are too many licensed betting shops already in Hereford. Connexions specifically have concerns that the proposed betting shop is in the vicinity of a school and close to the Cathedral Close, which is a site where many young people congregate.

Coral have stated in their 'Notice of Intention' that they wish to address the committee, particularly to:

- i. provide evidence to respond to the representation,
- ii. mention their strict compliance policy / procedures,
- iii. mention Coral's 'Think 21' policy, and
- iv. provide evidence to suggest that Hereford is not '*over licensed*' with betting offices.

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

Should the application be approved, section 183 of the Act states that no premises shall be used for Gambling on Christmas Day.

The Gambling Act under Section 167 and 168 provides Mandatory and Default conditions to be attached to different categories of premises licences.

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.
- (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'.

In respect of betting premises licences (other than track premises licences) the following mandatory conditions apply: -

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. *(1) Access to the premises shall be from a street or from other premises with a betting premises licence.
(2) Without prejudice to sub-paragraph (1), there shall be no means of direct access between the premises and other premises used for the retail sale of merchandise or services.*
3. *Subject to anything permitted by virtue of the 2005 Act, or done in accordance with paragraphs 4, 5, 6 and 7 below, the premises shall not be used for any purpose other than for providing facilities for betting.*
4. *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 leave any gaming machine or betting machine in order to do so.*

5. *No apparatus for making information or other material available in the form of sounds or visual images may be used on the premises, except for apparatus used for the following purposes—*
 - (a) *communicating information about, or coverage of, sporting events, including—*
 - (i) *information relating to betting on such an event; and*
 - (ii) *any other matter or information, including an advertisement, which is incidental to such an event;*
 - (b) *communicating information relating to betting on any event (including the result of the event) in connection with which betting transactions may be or have been effected on the premises.*
6. *No publications, other than racing periodicals or specialist betting publications, may be sold or offered for sale on the premises.*
7. *No music, dancing or other entertainment shall be provided or permitted on the premises, save for entertainment provided in accordance with paragraph 5.*
8. (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.*
9. *A notice setting out the terms on which customers are invited to bet on the premises shall be displayed in a prominent place on the premises to which customers have unrestricted access.*

In addition to this the following default condition will apply unless the Committee decide to exclude it under Section 169: -

No facilities for gambling shall be provided on the premises between the hours of 10pm on one day and 7am on the next day.

8. **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.

9. **Options: -**

There are a number of options available to committee

- Grant the licence (mandatory conditions would apply) attaching the default condition.
- Grant the licence (mandatory conditions would apply) excluding the default condition.
- Grant the licence (mandatory conditions would apply) attaching the default condition and attach further conditions.
- Grant the licence (mandatory conditions would apply) excluding the default condition and attach further conditions.
- To reject the application.

10. **Background Papers**

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