

# AGENDA

## Regulatory Sub Committee

Date: **Monday 10 August 2009**

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Time: **10.00 am**

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

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

For any further information please contact:

**Ricky Clarke, Democratic Services Officer**

Tel: 01432 261885

Email: [rclarke@herefordshire.gov.uk](mailto:rclarke@herefordshire.gov.uk)

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If you would like help to understand this document, or would like it in another format or language, please call Ricky Clarke, Democratic Services Officer on 01432 261885 or e-mail [rclarke@herefordshire.gov.uk](mailto:rclarke@herefordshire.gov.uk) in advance of the meeting.

# Agenda for the Meeting of the Regulatory Sub Committee

## Membership

Councillor SPA Daniels  
Councillor P Jones CBE  
Councillor A Seldon

## **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. A Councillor who has declared a prejudicial interest at a meeting may nevertheless be able to address that meeting, but only in circumstances where an ordinary member of the public would be also allowed to speak. In such circumstances, the Councillor concerned will have the same opportunity to address the meeting and on the same terms. However, a Councillor exercising their ability to speak in these circumstances must leave the meeting immediately after they have spoken.

## AGENDA

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| <b>1. ELECTION OF CHAIRMAN</b>  |         |
| To elect a Chairman for the hearing.  |         |
| <b>2. APOLOGIES FOR ABSENCE</b>   |         |
| To receive apologies for absence.   |         |
| <b>3. NAMED SUBSTITUTES (IF ANY)</b>  |         |
| To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.  |         |
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| To receive any declarations of interest by Members in respect of items on the Agenda.   |         |
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# **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.

## **Public Transport Links**

- Public transport access can be gained to Brockington via the service runs approximately every 20 minutes from the City 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 Vineyard Road near to its junction with Old Eign Hill. The return journey can be made from the same bus stop.

## **HEREFORDSHIRE 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.

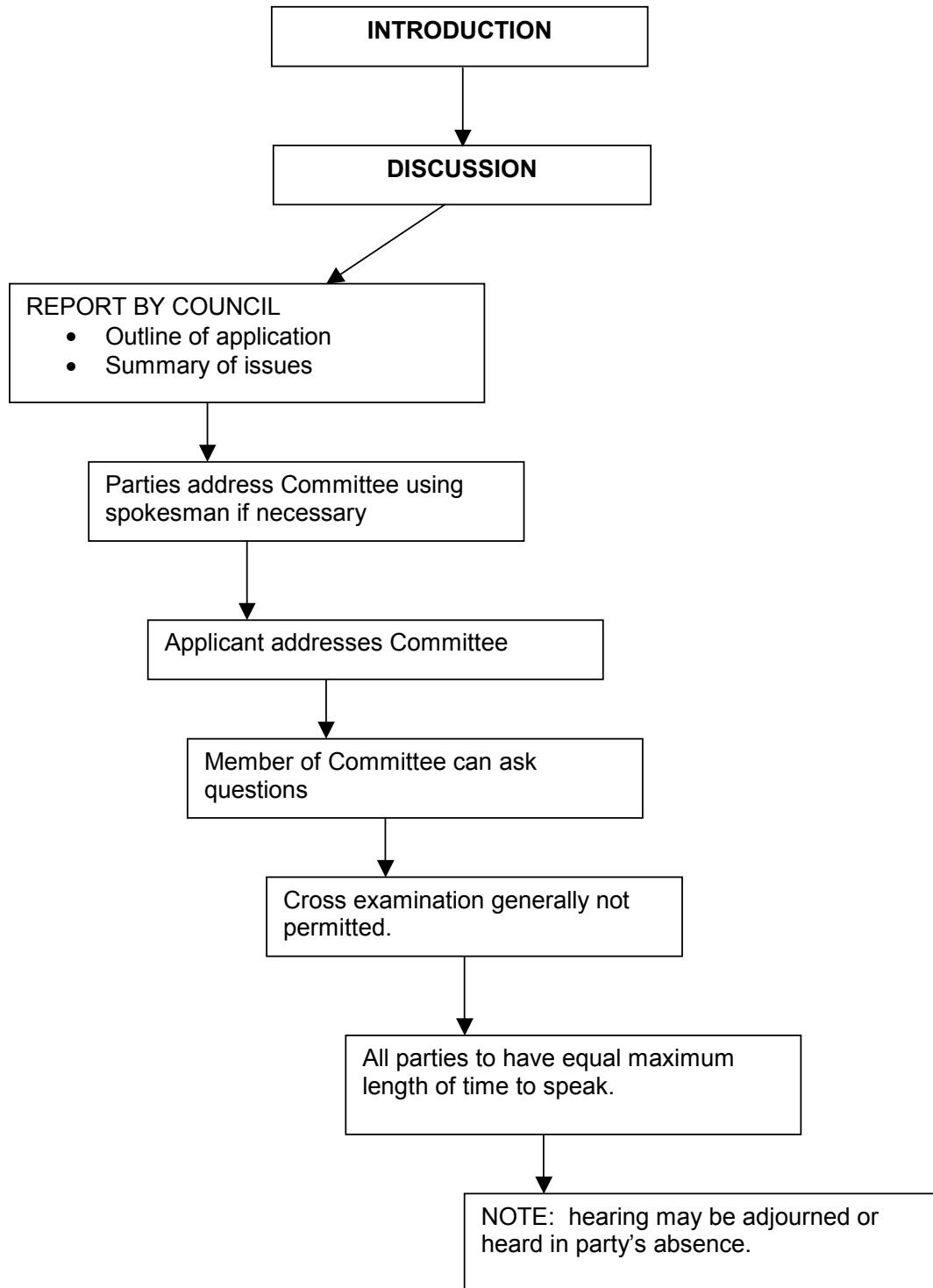
Please do not allow any items of clothing, etc. to obstruct any of the exits.

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



Where possible this agenda is printed on paper made from 100% Post-Consumer waste. De-inked without bleaching and free from optical brightening agents (OBA). Awarded the Nordic Swan for low emissions during production and the Blue Angel environmental label

## LICENCING HEARING FLOW CHART





|                         |   |
|-------------------------|---|
| <b>MEETING:</b>         | <b>REGULATORY SUB-COMMITTEE</b>   |
| <b>DATE:</b>            | <b>10 AUGUST 2009</b>   |
| <b>TITLE OF REPORT:</b> | <b>REVIEW OF PREMISES LICENCE: BRITANNIA INN,<br/>COTTERELL STREET, HERFORD. HR4 0HH –<br/>LICENSING ACT 2003</b> |
| <b>PORTFOLIO AREA:</b>  | <b>ENVIRONMENT &amp; CULTURE</b>  |

**CLASSIFICATION:** Open

### **Wards Affected**

St Nicholas

### **Purpose**

To consider an application for a review of the premises licence relating to 'Britannia Inn, Cotterell Street, Herford, HR4 0HH,' called by Mr & Mrs Jones, 10 Cotterell Street, Hereford on 12 June 2009 and by Miss J Elwell and M. Flakowska on 16 June 2009.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

THAT Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should 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, and
- The Herefordshire Council Licensing Policy.

### **Key Points Summary**

- Review called on the grounds of prevention of crime and disorder and public nuisance.
- Two applications received for review
- Five further representations support the review
- One representation against the review
- Representation from the police supporting the review.

Further information on the subject of this report is available from  
Fred Spriggs – Licensing Officer 01432 383542

## Options

1 Take no action or 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.

## Reasons for Recommendations

2 Ensures compliance with the Licensing Act 2003.

## Introduction and Background

### 3 Background Information

|                        |   |                       |
|------------------------|---|-----------------------|
| Applicant              | <b>1. Roger Alan Jones &amp; Georgina Pearl Jones</b><br><b>10 Cotterell Street, Hereford, HR4 0HQ.</b> |                       |
|                        | <b>2. Jessica Elwell &amp; Monika Flakowska</b><br><b>5 Cotterell Street, Hereford, HR4 0HH.</b>        |                       |
| Premise Licence Holder | <b>Punch Taverns PLC, Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire, DE14 2WF.</b>     |                       |
| Solicitor              | <b>TLT Solicitors, Bristol.</b>   |                       |
| Type of application:   | Date received:  | 28 Days consultation: |
| <b>Review</b>          | <b>1. 16/06/09</b>  | <b>14/07/09</b>       |
|                        | <b>2. 17/06/09</b>  | <b>15/07/09</b>       |

### 4 Current Licence

The current licence authorises the following licensable activities during the hours shown: -

A performance of live music  
Monday-Saturday: 10:00 - 23:00  
Sunday: 11:00 - 22:30

Any playing of recorded music; Sale by retail of alcohol  
Monday-Saturday: 10:00 - 00:00  
Sunday: 11:00 - 22:30

**5 Summary of Application**

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

- Prevention of Crime & Disorder
- Prevention of Public Nuisance

**6 The grounds for the review are: -**

Mr & Mrs Jones and states: -

Loud music  
Shouting (bad language)  
Taking drinks into the street  
Police called  
Urinating in the street  
Maybe drugs changing hands

J Elwell & Monika Flakowska state: -

Loud music  
Shouting  
Fighting outside  
Aggressive behaviour  
Drinking in the street  
Urinating in the street  
Police called  
Suspected drugs are being used/taken in the pub

**7 The information provided to support this application is: -**

Full details in support of this application have been provided which are shown at page 4 of the application forms, which can be found within the background papers.

**8 Summary of Representations**

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

**9 Responsible Authorities**

A representation has been received from the Police with a recommendation that the committee should attach four additional conditions to the licence, to promote the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.

**10 Interested Parties**

Five representations have been received from local residents supporting the calling of the review and one representation against the calling of the review.

## Key Considerations

- 11 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

Guidance issued under Section 182 of the Licensing Act 2003 in respect of Reviews states at paragraph: -

- 11.18 In deciding which of these powers to invoke (*shown within the options*), it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

The attention of the Committee is drawn to the stated case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, before the Honourable Mrs Justice Black.

In this case it was summed up that: -

“Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”

## Community Impact

- 12 It is felt that any decision made will have only a minimal impact on the community as a whole.

## Legal Implications

- 13 Schedule 5 Section 8(2) gives a right of appeal to: -

- a) the applicant for the review,
- b) the holder of the premises licence, or
- c) any person who made relevant representation in relation to the application.

- 14 Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

## Consultees

- 15 Responsible authorities and persons living or with a business interest within the vicinity of the premises.
- 16 A copy of the application was served on the responsible authorities. This was backed up by an



email sent to them by the Licensing Authority.

- 17 The notice of review was displayed on the premises prior to the start of the consultation period and was displayed for 28 days. In addition the notice was also displayed at the offices of the Licensing Unit at Bath Street, Hereford over the same period.

## **Appendices**

- 18
- a. Applications Form for Review x 2
  - b. Police Representation
  - c. Interested party representations

## **Background Papers**

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

## NOTES

### 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 Authority's 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.



2010/11 2003 Act of Licensing (Amendment) (No. 2) Bill  
Licensing (Amendment) Bill, No. 2003, Part 2  
May 2005

**Application for the review of a premises licence or club  
premises certificate under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

I MR R.A. JONES + MRS G.P. JONES  
(Insert name of applicant)

apply for the review of a premises licence under section 51 / ~~apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)~~

**Part 1 – Premises or club premises details**

|   |   |
|---|---|
| Postal address of premises or, if none, ordnance survey map reference or description<br><p style="text-align: center; margin: 10px 0;">BRITANNIA INN<br/>COTTERELL STREET</p> |   |
| Post town<br><p style="text-align: center; margin: 10px 0;">HEREFORD</p>  | Post code (if known)<br><p style="text-align: center; margin: 10px 0;">HR11</p> |
| Name of premises licence holder or club holding club premises certificate (if known)<br><p style="text-align: center; margin: 10px 0;">—</p>                                  |   |
| Number of premises licence or club premises certificate (if known)<br><p style="text-align: center; margin: 10px 0;">—</p>  |   |

**Part 2 - Applicant details**

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
  - a) a person living in the vicinity of the premises
  - b) a body representing persons living in the vicinity of the premises
  - c) a person involved in business in the vicinity of the premises
  - d) a body representing persons involved in business in the vicinity of the premises
  
- 2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A)  below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr  Mrs  Miss  Ms  Other title (for example, Rev)

Surname

JONES

First names

ROGER ALAN

I am 18 years old or over

Please tick yes



Current postal address if different from premises address



Post town

HEREFORD

Post Code

HR4 0HQ

Daytime contact telephone number



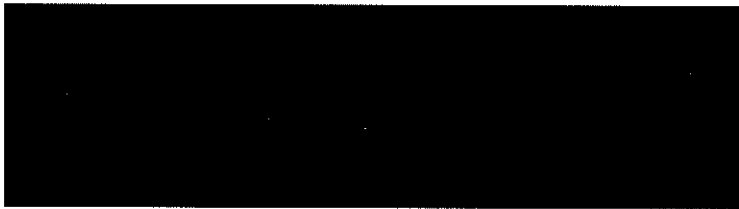
E-mail address (optional)



(B) DETAILS OF OTHER APPLICANT

Name and address

MRS GEORGINA PEARL JONES



Telephone number (if any)



E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

|                           |
|---------------------------|
| Name and address          |
| Telephone number (if any) |
| E-mail address (optional) |

**This application to review relates to the following licensing objective(s)**

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

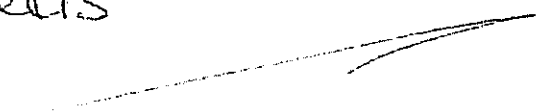
|                                     |
|-------------------------------------|
| <input checked="" type="checkbox"/> |
| <input type="checkbox"/>            |
| <input checked="" type="checkbox"/> |
| <input type="checkbox"/>            |

**Please state the ground(s) for review (please read guidance note 1)**

LOUD MUSIC  
SHOUTING. (BAD LANGUAGE)  
TAKING DRINKS INTO THE STREET  
POLICE CALLED  
URINATING IN THE STREET  
MAYBE DRUGS CHANGING HANDS

Please provide as much information as possible to support the application  
(please read guidance note 2)

See attached 2 (Two) separate  
sheets





Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year

|  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|

If you have made representations before relating to this premises please state what they were and when you made them

Herefordshire Council  
Environmental Health and  
Trading Standards  
County Offices, Bath Street  
Hereford HR1 2ZF

13-4-2009

The same grounds as stated  
in this application

Please tick yes

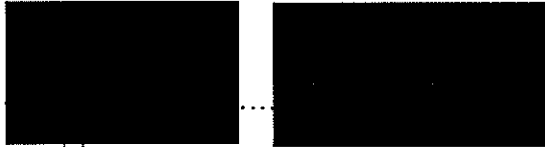
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Part 3 – Signatures** (please read guidance note 3)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature



Date

11-06-2009

Capacity

|   |                  |
|---|------------------|
| <b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 5) |                  |
| <b>Post town</b>  | <b>Post Code</b> |
| <b>Telephone number (if any)</b>  |                  |
| <b>If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)</b>   |                  |

**Notes for Guidance**

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Details from 10. Cottrell Street to support the application.

SAT 04 APRIL 2009 17.30PM - 00.00

Shouting from garden, Very Loud Music.  
Fight occurred, female very drunk having to be restrained. Police called (no action).

FRI 10 APRIL 2009 20.00PM - 23.00PM

Loud Music (seemed to come from garden)  
scuffle broke out in the yard of pub.

SAT 11 APRIL 2009 06.30AM - 07.00AM

Shouting and drinking men urinating against  
pub gate.

17.00PM 18.00PM

Very Loud Music.

SAT 18 APRIL 2009

Very Loud Karaoke (dreadful singing)  
not able to hear our TV in the lounge.

SAT 23 MAY 2009

Fancy dress night, lots of shouting  
drinking out on the pavement dreadful  
Language, 2 men wanting to fight.

SUN 24<sup>th</sup> MAY 2009 18.00 - 20.30

Live band, very Loud singing, tried to  
sit in the garden but could not stand the  
noise. Hot day

FRIDAY 29 MAY 2009

Hot day, Loud music a lot of shouting.

Details from 10 Cottrell Street to support the application

SAT 30 MAY 2009

0.6 IS AM

8 people came out onto pavement very loud talking while waiting for taxis.

P.M

Very loud music, singing from garden, shouting running up and down the street, leaning over parked cars, all had drinks in their hands.

20.15pm called police, arrived 20.35pm cans and broken glass on pavement (police asked to be swept up which happened.) music turned down a little, large number of young persons (21<sup>st</sup> Birthday).

WEDNESDAY 4<sup>th</sup> JUNE 2009

Pub closed in the evening, notice on the door closed until 14 June 2009

NB During most of the weekends during these periods my wife and I have had to sleep in a back bedroom to enable us to get a night's sleep.

**Application for the review of a premises licence or club premises certificate under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

Jessica Elwell & Monika Fladkowska  
 (Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

**Part 1 – Premises or club premises details**

|  |                      |
|--|----------------------|
| Postal address of premises or, if none, ordnance survey map reference or description |                      |
| BRITANNIA INN<br>COTTERELL STREET  |                      |
| Post town  | Post code (if known) |
| HEREFORD   | HR4                  |

|  |
|--|
| Name of premises licence holder or club holding club premises certificate (if known) |
| —  |

|  |
|--|
| Number of premises licence or club premises certificate (if known) |
| —  |

**Part 2 - Applicant details**

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
  - a) a person living in the vicinity of the premises
  - b) a body representing persons living in the vicinity of the premises
  - c) a person involved in business in the vicinity of the premises
  - d) a body representing persons involved in business in the vicinity of the premises
  
- 2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A)  below)

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Please tick

Mr  Mrs  Miss  Ms  Other title (for example, Rev)

Surname

ELWELL

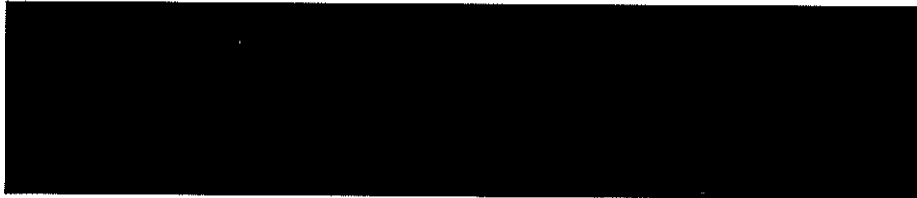
First names

JESSICA ANNE

I am 18 years old or over

Please tick yes

Current postal address if different from premises address



Post town

HEREFORD

Post Code



Daytime contact telephone number



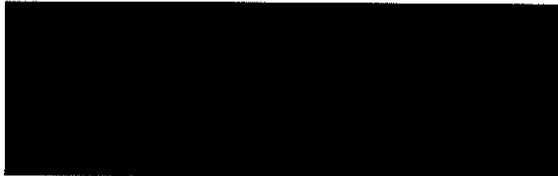
E-mail address (optional)



**(B) DETAILS OF OTHER APPLICANT**

Name and address

MONIKA KLAROWSKA



Telephone number (if any)



E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

|                           |
|---------------------------|
| Name and address          |
| Telephone number (if any) |
| E-mail address (optional) |

**This application to review relates to the following licensing objective(s)**

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

**Please state the ground(s) for review (please read guidance note 1)**

LOUD MUSIC  
SHOUTING  
FIGHTING OUTSIDE  
AGGRESSIVE BEHAVIOUR  
DRINKING ~~BE~~ IN THE STREET  
URINATING IN THE STREET  
POLICE CALLED  
SUSPECT DRUGS ARE BEING USED / TAKEN  
IN THE PUB

Please provide as much information as possible to support the application  
(please read guidance note 2)

(See attached sheets)



NOISE FROM PUB

SINCE NEW MANAGEMENT PUB HAS BEEN PLAYING  
LOUD MUSIC, SHOUTING AND GENERAL NOISE POLLUTION.  
IT HAS BECOME UNBARABLE FORCING US TO CHANGE ROOM.

WEEKENDS

- PARTICULARLY BAD SATURDAY & SUNDAY MORNING
- SHOUTING BEGINNING AT 7AM AND FINISHED AROUND 8:30AM
- OTHER SUNDAYS MUSIC STARTS AT ABOUT 10AM
- AFTERNOON MUSIC (LOUD) DURING THE WEEK
- EVENING / NIGHT TIME MUSIC SOMETIMES STARTS AT 10PM ~~AND~~ AND STOPS AT ABOUT 12 PM OR 1AM

(IRREGULAR)

LOG OF NOISE STARTING 02/04/09

THURSDAY (02/04/09) - LOUD MUSIC STARTED 9AM AND FINISHED AT ABOUT 10AM

FRIDAY 03/04/09 - MUSIC FROM THE PUB IS AFFECTING OUTSIDE (GARDEN), BEDROOM, KITCHEN & CONSERVATORY.  
LOUD MUSIC PLAYS UNTIL 12:30AM AND IS AFFECTING SLEEPING

SATURDAY 04/04/09  
10:30 PM - LOUD MUSIC IS AFFECTING WHOLE HOUSE  
- PEOPLE STANDING OUTSIDE THE FRONT OF OUR HOUSE, SHOUTING AND URINATING ON OUR WALL  
LOUD MUSIC CONTINUES UNTIL LATE HOURS (CALLED POLICE

7 PM - FIRST OUTSIDE THE HOUSE - LOUD STRUCTURAL SWEARING  
AND MUSIC CONTINUES (CALLED POLICE AGAIN)

FRIDAY 10/04/09 LOUD MUSIC STARTS 8:00 AND  
CONTINUES UNTIL 00:00  
MUSIC AFFECTS ALL ROOMS

SATURDAY 11/04/09 ~~GAME~~ 2 PM - LOUD MUSIC  
AFFECTING ALL ROOMS AND GARDEN

EASTER SUNDAY - 3 PM - MUSIC FULL BLAST  
MUSIC + DJ'S VOICE CAN BE  
HEARD THROUGHOUT THE WHOLE HOUSE.  
CAN'T EVEN DROWN OUT THE NOISE  
WITH THE T.V. ON WE DECIDED  
TO LEAVE FOR THE AFTERNOON  
AS IT IS UNBEARABLE.

9 PM THE SAME NOISE LEVEL AS  
EARLIER

MUSIC CARRIED ON UNTIL AFTER  
MIDNIGHT (SLIGHTLY LESS LOUD BUT  
AFFECTING SLEEPING)

LOUD MUSIC AN GENERAL NOISE POLLUTION  
CONTINUES UNTILL TODAY.

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year

|  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|

If you have made representations before relating to this premises please state what they were and when you made them

- CALLS TO THE POLICE WHEN THERE WERE BIG FIGHTS IN THE STREETS.
- SUPPORTED NEIGHBOURS APPLICATION TO ENVIRONMENTAL HEALTH.

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Part 3 – Signatures** (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature

..... [Redacted Signature] .....

Date

..... 14/06/2009 .....

Capacity

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

**Notes for Guidance**

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Hereford Police Station  
Bath Street  
HEREFORD  
HR1 2HT  
Tel 08457 444888 Fax: 01432 347148



**WEST MERCIA**  
**CONSTABULARY**  
TOGETHER - WORKING FOR SAFETY AND JUSTICE

9<sup>th</sup> July 2009

Our Ref:  
Your Ref:

Herefordshire Council Licensing Department  
PO Box 233  
Bath Street  
HEREFORD



Dear Sir or Madam:

REF: BRITANNIA INN, COTTERELL STREET, HEREFORD  
APPLICATION FOR REVIEW OF PREMISE LICENCE,  
LICENSING ACT 2003

I refer to the above mentioned application made pursuant to the licensing Act 2003, by a Mr R A Jones

For the purpose of the Licensing Act 2003 the West Mercia Police have the following relevant representations to make.

The premise is located in the middle of a residential area, and has operated as a community pub for many years.

In January 2009, the DPS at the premise was varied from Anthony PEARCE to Jane OAKES, who had previously operated the premise for many years with out undue incidents. At the time the DPS was varied the running and day to day management of the pub taken over by Karen Lesley SYMONDS.

Since January 2009 the operation of the premise appears to have changed with the introduction on a regular basis of loud music and karaoke. During this time the West Mercia Police have been made aware of a number of complaints concerning the noise, and of foul and abusive language used by the person acting as DJ.

The complaints received about the noise were not limited to the evenings but were received at any time on a Saturday or Sunday

At 0007 hours on Thursday 21<sup>st</sup> May 2009, the West Mercia Police were called to a reported fight at the front of the premise. Officers attended and discovered that two drunken males had been ejected, one of whom had returned and smashed a window at the front.

At 2013 hours on Saturday 30<sup>th</sup> May 2009, the West Mercia Police were again called to a disturbance at the premise. The duty inspector attended and

discovered that Karen SYMONDS had left her son in charge of the premise, and that music was blearing from the premise with no consideration for residents. The view of the Inspector who attended the scene was that the staff had lost control, and they were warned of the police powers of closure.

It is the view of the West Mercia Police, that in order to promote the licensing objectives of the prevention of public nuisance the prevention of crime and disorder that the following conditions to added to the premise licence.

- No live or amplified music to be played outside at any time.
- No open containers to be removed from the front of the premise.
- No open containers to be removed from the premise to the outside area located to the rear of the premise after 2300 hours.
- Terminal hour for all licensable activities of 2300.



S G Thomas  
PC 697  
Licensing Officer

Dear Sir, Madam,

I am writing to inform you of my strong objection to the re-issuing of a licence to the current occupiers of the Britannia Pub, Cotterell Street.

My concerns are many regarding this pub, and feel the licensing authority should be aware of the situation before making a final decision.

- Serving customers who have "Hand Bans"
- Serving alcohol out of licensed hours
- A suggestion of drug activities taking place on the premises
- Noise pollution
- Inciting their customers to fight anyone who comes to the pub to complain regarding the noise from their OUTDOOR Karaoke

If you would like to contact me regarding my concerns, please call me on 01432 370758 (after 5.30pm)

Yours sincerely,

Dear Sirs,

I object to the renewal of the licence of the "Brittonia" pub  
( Cottrell Street Glasgow ) on the grounds of disturbance of the  
peace at night and disregard of being located in a residential  
area on numerous occasions e.g. Easter Saturday '09  
extremely loud music from early afternoon till late at night.  
Please keep my name and address in confidence.



3<sup>rd</sup> July, 2009

Licensing Section,  
County Offices,  
Bath Street,  
Hereford.  
HR1 2ZF

Dear Sir,

Ref. R. A. Jones, The Britannia Inn, Cotterell Street, HR4 0HH

I note, with considerable trepidation, that an application has been made, by the above named person, to receive a licence from your department, with regard to the above mentioned Inn, and that you invite submissions by "interested parties", with regard to the application.

I wish to state that I, and my wife, and children, (Mrs S. J. Wood, Mr A. C. Wood, and Mr. D. J. Wood), object to the granting of any such licence in the strongest possible terms.

Over the previous months we have been subjected, on a frequent and regular basis, to excessive noise, violence in the street, abuse/ intimidation of local residents, and a dramatic increase in the level of vandalism against our property and vehicles.

In this time I have spoken to the person on the premises, who I assume to be Mr R. A. Jones, and I have contacted the Police on two occasions with my/our complaints.

I further believe, although having no direct evidence to substantiate this belief, that there is distribution of controlled substances occurring on these premises.

In conclusion, I sincerely hope that the application will be rejected, and that the Inn will, eventually, return to being a focal point for local *families* to enjoy.

Yours faithfully,

12<sup>th</sup> July 2009

14 JUL 2009

Dear Sir/Madam,

I am writing in relation to the granting of the licence in regards of The Britannia Public House, 7 Cottrell Street, Hereford, HR4 0HH. I am writing as a householder whose property backs on to the Britannia Arms, and as someone who has an understanding of the licence trade having worked in licence premises for the past twenty years and having held licences for public houses in Hereford and been a personal licence holder for the past five years.

The Britannia Arms has in the last six months changed hands and as I understand, the present incumbents are applying to have the licence to operate placed in their names. As I have said, I live at the rear of the pub and my garden virtually backs onto their premises and I believe my experience is typical of the people who live near and around the Britannia Arms. Since the present incumbents have been in charge of the Britannia Arms, our community has been the victim of theirs and their customers' abuse on a continuing basis.

In general the noise from the pub is out of all proportion and at the most inappropriate times. 'Special events' and 'parties' occur on a regular basis when customers' behaviour has appeared to be out of control. The language is offensive and customers literally scream at the top of their voices for long periods of time. I cannot stress this enough, this is not just high spirits but this is people out of control, screaming the most offensive language and suggestions to each other and towards the pub's neighbours.

I will now give you a number of examples of the typical behaviour that has recently occurred in the Britannia Arms. These occasions are not atypical but are the norm.

The pub has a number of outdoor 'musical' events. These have tended to occur on a Sunday afternoon. One of which was a karaoke. This started at approximately noon and carried on till 7pm. The level of the music was out of all proportion to the number of people in attendance. I can see the pub garden from my bedroom window and at no point was there more than 25 people there. However, I was unable to carry on a normal conversation with my family in my house without shouting.

On another Sunday daytime, the pub had hired a DJ. This again started at midday and again carried onto at least 7pm. The music was again absurdly loud. I could not have a conversation with my next door neighbour without screaming at him over the fence. On this occasion we made a number of attempts to ring the pub to ask them to turn the music down. However, unable to find an appropriate number for the pub we decided to go out for the day to escape the noise. Whilst getting changed in our bedroom which overlooks the pub, we heard the DJ over the P.A. say, and I quote, "We've had a complaint from the neighbours about the noise. Fuck the neighbours. We're here to stay and so is the fucking noise. If any of you (the customers) want to climb over the neighbours fences and take a brick, you're welcome, and if the neighbours have a problem they can come and say it to our faces". At this point, I called the police station at Hereford and made an official complaint. I am however, unaware if anything was done about this. Being personally aware of the nature of the people running the Britannia, I felt unable to approach them with a complaint as I was sure this would only be met with verbal if not physical abuse. I know however, having talked to them, that my neighbours feel the same way.



On another occasion, we were woken in the early hours of the morning to, again, inappropriate, loud and lewd behaviour. At approximately 2 am one Monday morning, we were awoken by a number of males from the Britannia who had decided after a nights drinking to take a swim in the large pool which had been erected in the pubs garden. This of course in its own right raises serious health and safety issues. However, these antics continued to at least 3 am and again as neighbours of the pub, we were forced to be party to inappropriate behaviour and a torrent of verbal abuse. The screaming went on for 45 minutes and at one point I heard one of the males say, "what about the neighbours", at which point I heard another of the males reply, "Fuck the neighbours. I don't give a fuck about the fucking neighbours". Needless to say, this woke my whole household, including my children and all of my immediate neighbours for some considerable time.

On another occasion, yet another 'event' or 'birthday', this time on a Friday afternoon, started at around 2 pm and again was out of all proportion. Customers were again out of control seemingly allowed to do and say whatever they wished with yet again taunts and verbal abuse aimed towards the neighbours. On this occasion, the music and party ended at around 8 pm. However, within that time the level of noise and abuse was similar to what has been documented previously.

These occasions are not isolated incidents but highlight the typical behaviour that has occurred in the Britannia Arms recently on a regular basis. As a personal licence holder, my belief is that the pub is out of control with customers being allowed, even encouraged to do what they like regardless of the consequences.

The Britannia is in the heart of a residential area and the pub should be a reflection of the community it exists within. Yet, the present incumbents seem to believe, because they run a pub, they have the right to do whatever they wish regardless of the community that they find

themselves within. Their attitude is unacceptable. The community in this area is made up, as in any residential district, of working families with children. The level of noise, language and behaviour coming from the pub is unacceptable and inappropriate for the community to have to bear. By their actions, the present tenants have created an atmosphere of fear and intimidation within the community, where it has become almost impossible to complain to them directly without concern of repercussion whether verbal or physical.

Whilst I fully appreciate and am sympathetic to the fact that the Britannia is a business with a need to make a living, this does not entitle whoever runs the pub to run roughshod over the community in the way that the present tenants and their customers have. The Britannia has enormous potential to be a wonderful community pub which it has been in the past. We know this from first hand experience as we have lived here for thirteen years. However, the present tenants have created a pub that has no relation to the community that it exists within and has therefore turned itself against the community it should be promoting.

I do not write this letter lightly, as having been in the trade myself for twenty years I understand the problems pubs are going through at the moment. I however believe that pubs have a responsibility to work within the communities that they find themselves in. It is my belief that the present tenants of the Britannia Arms do not understand the responsibilities that they have, first of all to holding a licence and secondly to the surrounding community.

The Licensing Section  
County Office  
Bath Street  
Hereford  
HR1 2ZF



**BRITANIA PUBLIC HOUSE - FULL SUPPORT**

Dear Sir,

I am writing to highlight my disappointment, and disbelief, that complaints have been made against the Landlady of the Britania Pub regarding noise levels. The complaints regarding excessive noise are not only unfounded, they are quite ridiculous, as it appears that they were lodged following a single incident outside the pub that required police intervention. These complaints appear to have been raised by a very small number of residents with an extremely negative outlook that have ganged together to show the pub in the worst possible light.

Of all the residents on Cotterell Street I believe my wife and I are the most likely to have an issue if there was excessive noise from the 'Brit' as our house joins directly on to the pub, with the pub entrance approx 12 feet from our front door and with the pub garden being adjacent to our own back garden. Since we have lived here (approximately 3 ½ years) we have never had reason to complain about conduct in, or outside of, the Brit and certainly have never had reason to complain about excessive noise; regardless of which licensee was managing the pub.

The complaints raised appear to be unfounded unless they are in fact about the kind of noise you would reasonably expect from a pub as a place for social gatherings. If that is the case then I would ask the small number who felt the need to complain **what did they expect when they bought a property in the vicinity of a long established public house?**

As I have already mentioned we have lived in our property for 3 ½ years and throughout that period we have had an excellent rapport with all of the licensees and always found them responsible, and keen to ensure that the pub is not seen in a bad light; after all it is bad for business!! I will also add that each of the licensees has made great effort to ensure that the pub business does not disrupt our lives, that of our neighbours or the community in general.

The Brit has struggled recently due to ever changing licensees and drop in custom, no doubt due to the economic climate, but nonetheless it still provides a steady service to the local community. The current licensee, Karen, is keen to improve the Brit and to make her business a key



part of the local community, and so far she is achieving her aim as the pub is now the **liveliest**, and **friendliest**, it has been since we moved in next door, particularly at weekends!

The complaints about noise appear to be lodged by a small minority that look down on the Brit with disdain, and have not realised till now that living in close proximity of a thriving pub they may well experience a little 'atmosphere' as it is a place for community to gather. Karen has always been keen to engage with her neighbours to resolve any issue, before it becomes a problem, and it would be a shame to see her efforts undermined by a small gang that seem to prefer the pub empty or even shutdown. This letter is intended to balance out any negative view of the Brit and to that end I give my **'Full Support'** to the Brit, and Karen, as a neighbour and as part of the local community.

Yours Faithfully 





|                         |  |
|-------------------------|--|
| <b>MEETING:</b>         | <b>REGULATORY SUB COMMITTEE</b>  |
| <b>DATE:</b>            | <b>10 AUGUST 2009</b>  |
| <b>TITLE OF REPORT:</b> | <b>REVIEW OF PREMISES LICENCE: MCCOLLS, 7 THE OVAL, HEREFORD. HR2 7HG – LICENSING ACT 2003</b> |
| <b>PORTFOLIO AREA:</b>  | <b>ENVIRONMENT &amp; CULTURE</b>   |

**CLASSIFICATION:** Open

### **Wards Affected**

Belmont

### **Purpose**

To consider an application for a review of the premises licence relating to 'McColls, 7 The Oval, Hereford, HR2 7HG' called by Paul West, Chief Constable of the West Mercia Constabulary.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

THAT Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should 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, and
- The Herefordshire Council Licensing Policy.

### **Key Points Summary**

- This the second review of their premises licence
- Called following a further underage sale.
- One representation received from a responsible authority.
- No representations received from interested parties.

### **Options**

- 1 Take no action or 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;

Further information on the subject of this report is available from  
Fred Spriggs – Licensing Officer 01432 383542

- (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.

## Reasons for Recommendations

- 2 Ensures compliance with the Licensing Act 2003.

## Introduction and Background

### 3 Background Information

|                        |  |                       |
|------------------------|--|-----------------------|
| Applicant              | <b>Paul West – Chief Constable West Mercia Constabulary</b>                              |                       |
|                        | <b>Represented by: -<br/>Stephen Gomer Thomas Police Constable 697</b>                   |                       |
| Premise Licence Holder | <b>Martin McColl Ltd, Martin McColl House, Ashwells Road, Brentwood, Essex, CM15 9ST</b> |                       |
| Solicitor              | <b>DWF, Liverpool</b>  |                       |
| Type of application:   | Date received:   | 28 Days consultation: |
| <b>Review</b>          | <b>16/06/09</b>  | <b>14/07/09</b>       |

### 4 Current Licence

The current licence authorises the following licensable activities during the hours shown: -

Sale by retail of alcohol (off sales):

- On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
- On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.
- On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
- On Good Friday, 8 a.m. to 10.30 p.m.

### 5 Previous Review

This licence was reviewed by the Regulatory Sub-Committee on 4<sup>th</sup> November 2008.

The grounds for that review were: -

The premise has been the subject of eight separate test purchase operations since the start of the Licensing Act in November 2005. On two of these occasions 3 sales have occurred.

The decision of that Committee was: -

That the following additional condition been imposed upon the licence from 4 February 2009:-

- Personal licence holder to be on site at all times during sales of alcohol.

That the following additional conditions be imposed forthwith upon the licence:-

- That the use of 'Challenge 25' is made a condition of all sales made on the premises.
- Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and trading standards officers.
- Prominent signs publicising the age challenge policy to be displayed at the entrance to the premises, at the tills and in all areas where alcohol is being displayed.

## 6 **Summary of Application**

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

- Prevention of Public Nuisance
- Protection of Children from harm

## 7 **The grounds for the review are: -**

The premises has been the subject of a number of test purchase operations involving youths aged 15 and 16 years between August 2005 and November 2008.

A total of 9 test purchase operations have been carried out and during those 3 sales were made.

The premise licence was reviewed in November 2008 as a result of these sales and additional conditions were added to the licence, including the use of Challenge 25.

A further test purchase operation was carried out in June 2009 and a sale was made to a 15 year old female.

## 8 **The information provided to support this application is: -**

Full details in support of this application have been provided which are shown at page 4 of the application form. This has been further expanded upon by way of representation dated 11<sup>th</sup> June 2009. Full details of this can be found within the background papers.

## 9 **Summary of Representations**

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

## 10 **Responsible Authorities**

A representation has been received from the Principal Trading Standards Officer.

## 11 **Interested Parties**

No representations have been received from interested parties.

## **Key Considerations**

- 12 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

Guidance issued under Section 182 of the Licensing Act 2003 in respect of Reviews states at paragraph: -

- 11.18 In deciding which of these powers to invoke (*shown within the options*), it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

The attention of the Committee is drawn to the stated case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

In this case it was summed up that: -

“Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”

## **Community Impact**

- 13 It is felt that any decision made will have only a minimal impact on the community as a whole.

## **Legal Implications**

- 14 Schedule 5 Section 8(2) gives a right of appeal to: -
- a) the applicant for the review,
  - b) the holder of the premises licence, or
  - c) any person who made relevant representation in relation to the application.
- 15 Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

## **Consultees**

- 16 Responsible authorities and persons living or with a business interest within the vicinity of the premises.
- 17 A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.
- 18 The notice of review was displayed on the premises prior to the start of the consultation period and was displayed for 28 days. In addition the notice was also displayed at the offices of the Licensing Unit at Bath Street, Hereford over the same period.

## **Appendices**

- 19 a. Application Form for Review
- b. Police Representation
- c. Trading Standards Representation

## **Background Papers**

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

## NOTES

### 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 Authority's 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 the review of a premises licence or club premises certificate under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Paul West Chief Constable West Mercia Constabulary

*(Insert name of applicant)*

**apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)**

**Part 1 – Premises or club premises details**

|  |                                     |
|--|-------------------------------------|
| <b>Postal address of premises or, if none, ordnance survey map reference or description</b><br>McColls<br>7 The Oval |                                     |
| <b>Post town</b> Hereford  | <b>Post code (if known)</b> HR2 7HG |

|  |
|--|
| <b>Name of premises licence holder or club holding club premises certificate (if known)</b><br>MARTIN McCOLL LTD |
|--|

|  |
|--|
| <b>Number of premises licence or club premises certificate (if known)</b><br>PR00388 |
|--|

**Part 2 - Applicant details**

I am

**Please tick yes**

- 1) an interested party (please complete (A) or (B) below)
- a) a person living in the vicinity of the premises
  - b) a body representing persons living in the vicinity of the premises
  - c) a person involved in business in the vicinity of the premises
  - d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A)  below)

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

**Please tick**

Mr

Mrs

Miss

Ms

Other title  
(for example, Rev)

**Surname**

**First names**

I am 18 years old or over

**Please tick yes**

**Current postal address if different from premises address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address (optional)**

**(B) DETAILS OF OTHER APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address

Stephen Gomer THOMAS Police Constable 697, on behalf of the Chief Constable of the West Mercia Constabulary  
Hereford Police Station  
Bath Street  
HEREFORD  
HR1 2HT

Telephone number (if any)

01432 364552

E-mail address (optional)

stephen.thomas@westmercia.pnn.police.uk

**This application to review relates to the following licensing objective(s)**

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

**Please state the ground(s) for review** (please read guidance note 1)

The premise has been the subject of a number of test purchase operations involving youths aged 15 and 16 years between August 2005 and November 2008.

A total of 9 test purchase operations have been carried out and during those operations 3 sales have been made.

The premise licence was reviewed in November 2008 as a result of these sales and additional conditions were added to the licence, including the use of Challenge 25

A further test purchase operation was carried out in June 2009, and a sale was made to a 15 year old female.



**Please provide as much information as possible to support the application**  
(please read guidance note 2)

On the 4<sup>th</sup> May 2007, Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old was served alcohol with out being challenged concerning her age.

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

On the 12<sup>th</sup> Augsut 2008, Herefordshire Council trading standards department , and the West Mercia Constabulary carried out a test purchase operation at the premise

A 16 year old female was served alcohol with out being challenged concerning her age.

On the same date and immediately after the 1<sup>st</sup> test, another 16 year old was served with alcohol with out being challenged concerning her age.

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

The person who made the sale was a personal licence holder

The premise stated they operate the challenge 25 policy

On the 4<sup>th</sup> November 2008, the premise licence was reviewed as a direct result of these sales , and the following conditions were added to the licence as of the 4<sup>th</sup> February 2009.

- 1 ) A personal licence holder to be on site at all times during sales of alcohol.
- 2 ) That the use of " Challenge 25 " is made a condition of all sales made on the premises
- 3 ) Training all staff engaged in selling alcohol in alchol awareness ( not just personal licence holders ) All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and trading standards officers.
- 4 ) Prominent signs publicising the age challenge policy to be displayed at the entrance to the premises, at the tills and in all areas where alcohol is being displayed.

On the 3<sup>rd</sup> June 2009, Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test ourchase operation at the premise

A 15 year old female was served with alcohol with out being challenged concerning her age

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

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Month                      Day  
Year                      10<sup>th</sup> September 2008

**If you have made representations before relating to this premises please state what they were and when you made them**

On the 4<sup>th</sup> November 2008, the West Mercia Constabulary called for a review of this premise licence, as a result of a number of sales made to persons under the age of 18.

The West Mercia Constabulary requested the Licensing Authority to impose the following additional conditions

That the use of " Challenge 25 is made a condition of all sales made on the premise

That the premise employ's proven training methods for al staff , in aged restricted sales, and that written records of the training are kept and made available for inspection by the Licensing Authority and Police.

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Part 3 – Signatures** (please read guidance note 3)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature

*J S Thorne PC 697*

Date 11<sup>th</sup> June 2009

Capacity Divisional Licensing Officer.

**Contact name (where not previously given) and postal address for correspondence associated with this application** (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

#### Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.



Licensing Department  
Hereford Police Station  
Bath Street  
HEREFORD  
HR1 2HT  
Direct Dial 01432 364552 Fax:



**WEST MERCIA**  
**CONSTABULARY**  
TOGETHER - WORKING FOR SAFETY AND JUSTICE

11<sup>th</sup> June 2009.

Our Ref:  
Your Ref:

Herefordshire Council Licensing Section  
The County Offices  
PO Box 233  
Bath Street  
HEREFORD  
HR1 2ZF

Dear Sir / Madam

REF: McCOLLS THE OVAL HEREFORD.  
APPLICATION TO REVIEW PREMISE LICENCE  
LICENSING ACT 2003

On behalf of the Chief Constable of the West Mercia Constabulary, I have made an application to review the premise licence for, McCOLLS, The Oval, Hereford.

The application is made in accordance with section 51 of the Licensing Act 2003, and for the purpose of section 52 (7) the relevant representations concern the promotion of the licensing objectives of "the protection of children from harm " and "the prevention of public nuisance "

The premise is licensed for the sale by retail of alcohol.

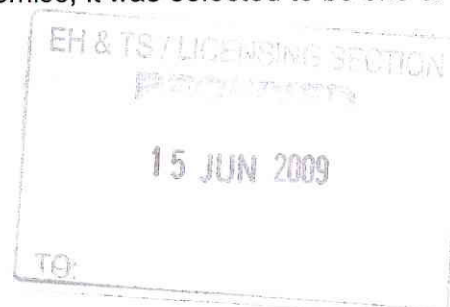
The West Mercia Constabulary and Herefordshire Council Trading Standards Department have taken part in regular test purchase operations.

These operations involved the use of 15 or 16 year olds, visiting licensed premises and attempting to purchase alcohol, in accordance with section 149 (2) of the Licensing Act 2003.

In the spring of 2007 The West Mercia Constabulary, and Herefordshire Council Trading Standards Department, took part in the, Home Office Police Standards Unit, test purchase operation.

The premises to be tested were selected on an intelligence led basis and had been either the subject of previous sales or complaints.

As a direct result of previous sales at this premise, it was selected to be one of the premises targeted



These operations took place between the 4<sup>th</sup> May and 15<sup>th</sup> July 2007, and in Herefordshire involved visits and tests at 20 premises in the county, with each premise being “tested “at least 3 times.

- On a national basis 1.064 of the 2.683 premises tested made sales.
- Of the 9000 separate “tests” 14.7% made sales.

In Herefordshire

- Out of the 20 premises visited, 12 made one sale or more, over 50%
- Out of 77 separate tests, 17 sales were made which is 22%.

This premise was the subject of tests during this operation,

- On the 4<sup>th</sup> May 2007 a sale was made to a 16 year old.
- On the 19<sup>th</sup> May 2007 no sale was made
- On the 9<sup>th</sup> June 2007 no sale was made
- On the 27<sup>th</sup> June 2007 no sale was made

In December 2007, The West Mercia Constabulary and Herefordshire Council Trading Standards Department carried out a further test purchase operation in the county.

During this operation 48 separate premise were made the subject of a single “test”

- Out of the 48 premises “tested “ 12 sold which is 25%
- This premise was the subject of a test purchase operation on the 15<sup>th</sup> December 2007, and no sale was made

In July and August 2008, the West Mercia Constabulary and Herefordshire Council Trading Standards Department carried out a further test purchase operation in the county.

During this operation 55 separate premise were made the subject of a single “test”

Out of the 55 premises “tested” 19 sold which is 29%

- This premise was the subject of a test purchase operation on the 12<sup>th</sup> August, and a sale was made to a 16 year old female.
- Immediately after this test another sale another 16 year old female



On the 10<sup>th</sup> September 2008, The West Mercia Constabulary called for a review of this premise licence as a result of these sales.

On the 4<sup>th</sup> November 2008 the Licensing Committee of Herefordshire Council reviewed the premise licence and imposed the following additional conditions.

- A personal licence holder to be on site at all times during sales of alcohol.
- That the use of " Challenge 25 " is made a condition of all sales made on the premises
- Training all staff engaged in selling alcohol in alcohol awareness ( not just personal licence holders ) All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and trading standards officers.
- Prominent signs publicising the age challenge policy to be displayed at the entrance to the premises, at the tills and in all areas where alcohol is being displayed.

On the 3<sup>rd</sup> June 2009, Herefordshire Council Trading Standards Department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 15 year old female was served with alcohol with out being challenged concerning her age.

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

In accordance with section 53 C (3) (E) the West Mercia Constabulary would seek the Licensing Authority to revoke the premise licence.

It is the view of the West Mercia Constabulary that the revocation of the licence is necessary to promote the licensing objective of the protection of children from harm, and the prevention of public nuisance, in view of the fact that all the additional conditions added to the licence have failed to prevent the sale to a 15 year old girl, during the 1<sup>st</sup> test purchase operation at the premise following review.

This premise has been the subject of a number of test purchase operations, since the introduction of the Licensing Act 2003, when responsibility for licensing moved from the magistrates' courts to the Licensing Authority.

The following table is a chronological list of these operations, results and subsequent action.

- On the 6<sup>th</sup> September 2006 no sale made
- On the 4<sup>th</sup> May 2007 a sale was made to a 16 year old.
- On the 19<sup>th</sup> May 2007 no sale was made
- On the 9<sup>th</sup> June 2007 no sale was made
- On the 27<sup>th</sup> June 2007 no sale was made
- On the 15<sup>th</sup> July 2007 no sale was made
- On the 12<sup>th</sup> August 2008 two sales were made to 16 year old Females
- On the 10<sup>th</sup> September 2008 West Mercia Constabulary call for a review
- On the 6<sup>th</sup> October 2008 No sale was made
- On the 4<sup>th</sup> November 2008 the licence was reviewed
- On the 3<sup>rd</sup> June 2009 a sale was made to a 15 year old female.

  
S G Thomas  
Licensing Officer  
PC 697



**Environment & Culture Directorate**  
Director: Michael Hainge

Regulatory Committee  
Council Chamber  
Brockington  
Hereford  
HR1 1SH

Your Ref:  
Our Ref: TJT/CE  
Please ask for: Mr T Thorne  
Direct Line / Extension: (01432) 261697  
Fax: (01432) 261982  
E-mail: tthorne@herefordshire.gov.uk

6 July 2009

Dear Councillors

**MARTIN McCOLL LTD, 7 THE OVAL, HEREFORD HR2 7HG**

I am writing to make representations in relation to the application for review of the above premise alcohol licence made by West Mercia Constabulary.

I feel it is relevant to make the Committee aware of the full test purchase history of the store, which I have done via the following table:-

**Alcohol test purchases**

| Date      | Sale/No Sale   | Age of buyer                |
|-----------|----------------|-----------------------------|
| 03/06/09  | <b>SALE</b>    | 15                          |
| 15/12/08  | NO SALE        | 16                          |
| 06/10/08  | NO SALE        |                             |
| 12/08/08  | <b>2 SALES</b> | 16 & 4 months & 16 & 1month |
| 15/12/07  | NO SALE        |                             |
| *27/06/07 | NO SALE        |                             |
| *09/06/07 | NO SALE        |                             |
| *19/05/07 | NO SALE        |                             |
| *04/05/07 | <b>SALE</b>    | 16                          |
| 06/09/06  | NO SALE        |                             |
| 24/08/05  | <b>SALE</b>    | 16                          |
| 15/10/04  | NO SALE        |                             |

\* Part of TUSAC, a widely publicised national campaign which required each store to have 3 successive no sales.

Continued .....



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County of Herefordshire District Council, PO Box 233 Council Offices Bath Street  
Hereford HR1 2ZF

Main Switchboard (01432) 260000 - [www.herefordshire.gov.uk](http://www.herefordshire.gov.uk)





2.

On 4<sup>th</sup> November 2008 you carried out a review of this premise licence and imposed certain conditions on the licence, which I believe are as follows:-

- Challenge 25 policy
- Prominent signs informing the public of this ID policy
- Training requirements

I understand the store has for some time purported to operate a Challenge 30 system. However on the evening of 3<sup>rd</sup> June 2009 the premises sold alcohol, (2L bottle of Old English Cider) to a 15 year old girl who was our test purchase volunteer. The shop assistant had only just taken her personal licence holder course. She stated she had thought the girl looked 18 and did not ask for ID despite the Challenge 30 policy. However she was genuinely remorseful and did accept responsibility for the sale.

The history now shows a total of 5 sales in 13 attempts. On paper there seems little, if anything, wrong with the company's procedures. My only suggestion is that generally in circumstances such as these, where, despite procedures, staff recklessly still operates to a Challenge 18 system in their own minds, the reason may be a culture amongst the staff of not following the Challenge 25 policy. This culture may or may not be due to the way management conduct the training and the way they instil in their staff the importance of sticking strictly to the policy at all times. I feel in this case the voluntary Challenge 30 policy is in no way better than the licence condition of Challenge 25, imposed at the review in November 2008. Challenge 25 is perfectly adequate and the voluntary increase in fact may simply cause complacency amongst staff who may then feel the "30" policy is over the top.

I did visit the store on 2<sup>nd</sup> July 2009 and spoke to the Deputy Manager Christine Longcroft. She advised me that currently 8 out of the 9 staff do have a personal licence. The staff all wear badges publicising the Challenge 30 policy. There were A4 size Challenge 30 notices in store. I suggested to Christine that instead of being high up above the fridges containing the alcohol, the signs should be on the doors of each fridge so consumers could not miss them. Also there should be signs at the entrance to the shop, since at present there is merely one small "No ID No Sale" sign which refers to 18, not 25 or 30. The refusals book at the tills contained a significant number of entries every day, which is not surprising following the underage sale on 3<sup>rd</sup> June. Christine advised me there was now a new DPS, a Kevin Moody, who was also the area manager. As a result of the underage sale in June, a new procedure is apparently now operated which is that for every alcohol sale the till receipt is signed by a second member of staff. Clearly this is to show the sale was approved by both staff, thus hopefully ensuring a further underage sale never takes place. Refresher Training for staff I was told is now on a monthly basis.

In terms of additional licence conditions which may be imposed, it is difficult to see what else can be done. However the current temporary precaution of each alcohol sale being further authorised by a second member of stall may be worth making into a permanent licence condition. I would also suggest that they revert to the existing licence condition of Challenge 25 as I do not feel 30 is beneficial in any way. It is simply that staff must think 25 at all times for ID and not slipping back into thinking 18 which then leads to underage sales. Clearly there are a range of options open to the

Continued .....



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Hereford HR1 2ZF

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3.

Committee and I shall attend the review hearing should you have any questions you wish to put to me. For your information the 15 year old girl's test purchasing record overall is 4 sales in 26 attempts.

Yours faithfully



**TIM THORNE**  
**PRINCIPAL TRADING STANDARDS OFFICER**  
**ENVIRONMENTAL HEALTH & TRADING STANDARDS**



---

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Hereford HR1 2ZF

Main Switchboard (01432) 260000 - [www.herefordshire.gov.uk](http://www.herefordshire.gov.uk)







## Spriggs, Fred

---

**From:** Seniscal, Ronald  
**Sent:** 13 July 2009 16:27  
**To:** Spriggs, Fred  
**Subject:** FW: Application for Review - McColls, 7 The Oval, Hereford, HR2 7HG

Fred

[just arrived in licensing inbox](#)

Ron

---

**From:** Suzanne Foo [mailto:Suzanne.Foo@dwf.co.uk]  
**Sent:** 13 July 2009 16:18  
**To:** Licensing  
**Cc:** stephen.thomas@westmercia.pnn.police.uk  
**Subject:** Application for Review - McColls, 7 The Oval, Hereford, HR2 7HG

F.A.O Mr F Spriggs

Dear Sir,

We write in relation to the above application for review which was posted by West Mercia Constabulary for which the period for representation we understand concludes on 14th July.

We would make the following representations on behalf of the Premises Licence Holder Martin McColl Limited and in advance of the formal representations to be made at the review, at which we would also supply documents supporting the comments made in this representation.

This review application follows a sale on 3rd June 2009. The Premises Licence Holder Martin McColl Limited takes all such incidents seriously, and it has investigated the circumstances of the sale and also considered what can be done to re-enforce in the minds of staff the company policies that are to be applied.

An internal investigation has led to the instigation of disciplinary proceedings against the seller. She indicated in interview that she believed the purchaser was someone who she had challenged previously and had received appropriate identification from. The seller although not yet a Personal Licence Holder had received notification during that week that she had passed her NCPLH Personal Licence exam. She had been trained in company policies and understood those policies. There is evidence in the refusals book that operates in the store she had challenged and refused on many occasions and recorded those challenges.

The company have issued the seller with a first and final written warning and have emphasised that she is not to rely on any past proof of identification but to ask for identification on each and every occasion in order to avoid any errors of this nature.

It is right to say on behalf of the company that since the review in November 2008 the company have now working at the store 8 members of staff who are Personal Licence Holders. The seller would have been number 9 and 2 other members of staff attended the NCPLH course on 23rd June 2009 with the results to be confirmed.

The company have implemented the conditions that were imposed on the last occasion with staff retrained and documents supporting the current training of staff members will be supplied at the hearing along with evidence that the seller signed the refusal book regularly with refusals and challenges.

The company have in place procedures whereby if no Personal Licence Holder is present, and this will be unlikely in view of the fact that currently 8 out of 11 staff members are Personal Licence Holders, alcohol is taken off sale. Signage is in the store and has been in the store identifying the challenge age.

The company have reviewed how it can re-enforce the message to staff that they should vigorously challenge young attempted purchasers and have now looked to introduce a Challenge 30 system in the store. The company has also instigated a system where any alcohol sale has to be approved by 2 members of staff both signing the copy receipt to indicate authorisation of the sale.

The company would look to continue to work with the authorities to try and prevent any such sales taking place. Documents supporting these representations will be produced at the hearing and we will on behalf of the company liaise with both Police and Trading Standards in the interim. The company would wish to have both the Regional Manager and Area Manager present at the hearing again to indicate that it seeks to take the responsibilities that it has under the Act seriously.

As previously indicated due to the time of year and pre-booked family holidays Mr Lenz, the Regional Manager is away from 25th July to 10th August, Mr Moodie, the Area Manager, from 17th August to 1st September, and the writer from 10th August to 19th August. We would ask if any hearing can accommodate these dates, but appreciate the difficulty of finding a convenient date for all parties.

We would ask that these representations be included in the bundle prepared for hearing.

Kind regards

David Crank

**DWF LLP**  
5 St Paul's Square Old Hall Street Liverpool L3 9AE  
**T** +44 (0)151 907 3000 **F** +44 (0)151 907 3030  
[www.dwf.co.uk](http://www.dwf.co.uk)

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|                         |   |
|-------------------------|---|
| <b>MEETING:</b>         | <b>REGULATORY SUB COMMITTEE</b>   |
| <b>DATE:</b>            | <b>10 AUGUST 2009</b>   |
| <b>TITLE OF REPORT:</b> | <b>REVIEW OF PREMISES LICENCE: COLLEGE GREEN, 33/35 COLLEGE GREEN, HEREFORD. HR1 1HW – LICENSING ACT 2003</b> |
| <b>PORTFOLIO AREA:</b>  | <b>ENVIRONMENT &amp; CULTURE</b>  |

**CLASSIFICATION:** Open

### **Wards Affected**

Aylestone

### **Purpose**

To consider an application for a review of the premises licence relating to 'College Green Post Office and Stores, 33/35 College Green, Hereford. HR1 1HW' called by Paul West, Chief Constable of the West Mercia Constabulary.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

THAT Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should 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, and
- The Herefordshire Council Licensing Policy.

### **Key Points Summary**

- Review called following a second underage sale.
- One representation received from a responsible authority.
- No representations received from interested parties.

### **Options**

- 1 Take no action or 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;

Further information on the subject of this report is available from  
Fred Spriggs – Licensing Officer 01432 383542

- (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.

## Reasons for Recommendations

- 2 Ensures compliance with the Licensing Act 2003.

## Introduction and Background

### 3 Background Information

|                        |  |                       |
|------------------------|--|-----------------------|
| Applicant              | <b>Paul West – Chief Constable West Mercia Constabulary</b>                      |                       |
|                        | <b>Represented by: -<br/>Stephen Gomer Thomas Police Constable 697</b>           |                       |
| Premise Licence Holder | <b>Gamron Ltd, Newtown Cross Garage, Lower Eggleton, Herefordshire, HR8 2TZ.</b> |                       |
| Solicitor              | <b>Derek Backhouse – T A Matthews, Hereford.</b>                                 |                       |
| Type of application:   | Date received:   | 28 Days consultation: |
| <b>Review</b>          | <b>16/06/09</b>  | <b>14/07/09</b>       |

### 4 Current Licence

The current licence authorises the following licensable activities during the hours shown: -

Sale by retail of alcohol (off sales):

- On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
- On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.
- On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
- On Good Friday, 8 a.m. to 10.30 p.m.

### 5 Summary of Application

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

- Prevention of Public Nuisance
- Protection of Children from harm

**6 The grounds for the review are: -**

The premises has been the subject of four separate test purchase operations in respect of sales to persons under the age of 18 and sales have been made on two occasions.

**7 The information provided to support this application is: -**

Full details in support of this application have been provided which are shown at page 4 of the application form. This has been further expanded upon by way of representation dated 11<sup>th</sup> June 2009. Full details of this can be found within the background papers.

**8 Summary of Representations**

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

**9 Responsible Authorities**

A representation has been received from the Principal Trading Standards Officer.

**10 Interested Parties**

No representations have been received from interested parties.

**Key Considerations**

**11 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.**

Guidance issued under Section 182 of the Licensing Act 2003 in respect of Reviews states at paragraph: -

11.8 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims.

The attention of the Committee is drawn to the stated case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

In this case it was summed up that: -

“Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”

## **Community Impact**

12 It is felt that any decision made will have only a minimal impact on the community as a whole.

## **Legal Implications**

13 Schedule 5 Section 8(2) gives a right of appeal to: -

- a) the applicant for the review,
- b) the holder of the premises licence, or
- c) any person who made relevant representation in relation to the application.

14 Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

## **Consultees**

15 Responsible authorities and persons living or with a business interest within the vicinity of the premises.

16 A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.

17 The notice of review was displayed on the premises prior to the start of the consultation period and was displayed for 28 days. In addition the notice was also displayed at the offices of the Licensing Unit at Bath Street, Hereford over the same period.

## **Appendices**

- 18 a. Application Form for Review
- b. Police Representation
- c. Trading Standards Representation

## **Background Papers**

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

## NOTES

### 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 Authority's 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 the review of a premises licence or club premises certificate under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Paul West Chief Constable West Mercia Constabulary

*(Insert name of applicant)*

**apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)**

**Part 1 – Premises or club premises details**

|  |                                     |
|--|-------------------------------------|
| <b>Postal address of premises or, if none, ordnance survey map reference or description</b><br>College Green Post Office and Stores<br>33 / 35 College Green |                                     |
| <b>Post town</b> Hereford  | <b>Post code (if known)</b> HR1 1HW |

|   |
|---|
| <b>Name of premises licence holder or club holding club premises certificate (if known)</b><br>Gamron Ltd |
|---|

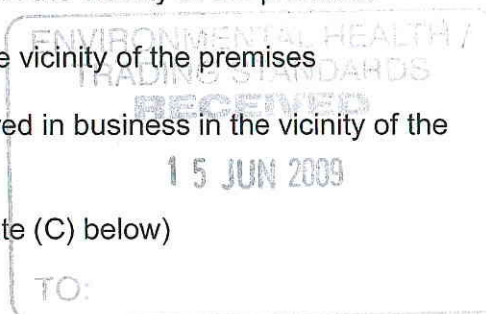
|   |
|---|
| <b>Number of premises licence or club premises certificate (if known)</b><br>PR 00386 |
|---|

**Part 2 - Applicant details**

I am

**Please tick yes**

- 1) an interested party (please complete (A) or (B) below)
  - a) a person living in the vicinity of the premises
  - b) a body representing persons living in the vicinity of the premises
  - c) a person involved in business in the vicinity of the premises
  - d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)



3) a member of the club to which this application relates (please complete (A)  below)

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Please tick

Mr  Mrs  Miss  Ms  Other title  
(for example, Rev)

**Surname**

**First names**

I am 18 years old or over

Please tick yes

**Current postal address if different from premises address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address (optional)**

**(B) DETAILS OF OTHER APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)



**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

|  |
|--|
| Name and address<br>Stephen Gomer THOMAS Police Constable 697, on behalf of the Chief Constable of the West Mercia Constabulary<br>Hereford Police Station<br>Bath Street<br>HEREFORD<br>HR1 2HT |
| Telephone number (if any)<br>01432 364552  |
| E-mail address (optional)<br>stephen.thomas@westmercia.pnn.police.uk   |

**This application to review relates to the following licensing objective(s)**

Please tick one or more boxes

- |   |                                     |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input type="checkbox"/>            |
| 2) public safety                        | <input type="checkbox"/>            |
| 3) the prevention of public nuisance    | <input checked="" type="checkbox"/> |
| 4) the protection of children from harm | <input checked="" type="checkbox"/> |

**Please state the ground(s) for review** (please read guidance note 1)

The premise has been the subject of four separate test purchase operations in respect of sales to persons under the age of 18, and sales have been made on two occasions .

**Please provide as much information as possible to support the application**  
(please read guidance note 2)

At 1810 hours on 19<sup>th</sup> August 2008, Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old female was served alcohol with out being challenged concerning her age.

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

At 1850 hours on 3<sup>rd</sup> June 2009, Herefordshire Council trading standards department , and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 15 year old female was served alcohol with out being challenged concerning her age.

The person who made the sale was the Designated Premise Supervisor and was issued with a fixed penalty notice

The DPS stated that the store operated Rule 21

**Please tick yes**

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day

Month

Year

**If you have made representations before relating to this premises please state what they were and when you made them**

N/A



Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Part 3 – Signatures** (please read guidance note 3)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature

*S. J. Thomas PC694*

Date 11<sup>th</sup> June 2009

Capacity Divisional Licencing officer

**Contact name (where not previously given) and postal address for correspondence associated with this application** (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

#### Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.





Licensing Department  
Hereford Police Station  
Bath Street  
HEREFORD  
HR1 2HT  
Direct Dial 01432 364552 Fax:



**WEST MERCIA**  
**CONSTABULARY**  
TOGETHER - WORKING FOR SAFETY AND JUSTICE

11<sup>th</sup> June 2009.

Our Ref:  
Your Ref:

Herefordshire Council Licensing Section  
The County Offices  
PO Box 233  
Bath Street  
HEREFORD  
HR1 2ZF

Dear Sir / Madam

REF: COLLEGE GREEN POST OFFICE and STORES  
APPLICATION TO REVIEW PREMISE LICENCE  
LICENSING ACT 2003

On behalf of the Chief Constable of the West Mercia Constabulary, I have made an application to review the Premise Licence for, College Green Post office and Stores.

The application is made in accordance with section 51 of the Licensing Act 2003, and for the purpose of section 52 (7) the relevant representations concern the promotion of the licensing objectives of " the protection of children from harm " and " the prevention of public nuisance "

The premise is licensed for the sale by retail of alcohol.

In the spring of 2007 The West Mercia Constabulary, and Herefordshire Council Trading Standards Department, took part in the, Home Office Police Standards Unit, test purchase operation.

These operations involved the use of 15 or 16 year olds, visiting licensed premises and attempting to purchase alcohol, in accordance with section 149 (2) of the Licensing Act 2003.

These operations took place between the 4<sup>th</sup> May and 15<sup>th</sup> July 2007, and in Herefordshire involved visits and tests at 20 premises in the county, with each premise being " tested " at least 3 times.

- On a national basis 1.064 of the 2.683 premises tested made sales.
- Of the 9000 separate "tests" 14.7% made sales.

In Herefordshire

- Out of the 20 premises visited, 12 made one sale or more, over 50%
- Out of 77 separate tests, 17 sales were made which is 22%.

This premise was not the subject of tests during this operation, but in view of the high failure rate further operations were planned, with a larger number of premises being tested.

In December 2007, The West Mercia Constabulary and Herefordshire Council Trading Standards department carried out a further test purchase operation in the county.

During this operation 48 separate premises were made the subject of a single "test"

- Out of the 48 premises "tested" 12 sold which is 25%
- This premise was the subject of a test purchase operation on the 22 December 2007, and no sale was made.

Because of the same high failure rate, during the summer of 2008, the West Mercia Constabulary and Herefordshire Council Trading Standards department carried out further test purchase operations in the county.

During this operation 55 separate premises were made the subject of a single "test"

Out of the 55 premises "tested" 19 sold which is 29%

- This premise was the subject of a test purchase operation on the 19<sup>th</sup> August 2008, and a sale was made to a 16 year old female.

In the autumn of 2008 the West Mercia Constabulary and Herefordshire Council Trading Standards department carried out further test purchase operations in the county.

- This premise was the subject of a test purchase operation on the 6<sup>th</sup> October 2008, and no sale was made.

In the spring of 2009, the West Mercia Constabulary and Herefordshire Council Trading Standards department carried out further test purchase operations in the county.

- This premise was the subject of a test purchase operation on the 3<sup>rd</sup> June 2009, and a sale was made to a 15 year old female.

This sale was made by the Designated Premise Supervisor.



In accordance with section 53 C (3) (A) the West Mercia Constabulary would seek the licensing authority to modify the conditions on the licence by the addition of the following.

- That the use of "challenge 21" is made a condition of all sales made on the premise.
- That the premise employ's proven training method for all staff, in age restricted sales, and that written records of the training are kept and made available for inspection by the Licensing Authority and Police.

It is the view of the West Mercia Constabulary that the provision of these two conditions is necessary to promote the licensing objective of the protection of children from harm, and the prevention of public nuisance. They are the minimum conditions we would wish to see if the premise is to continue to be licensed.

*S G Thomas*  
*PC 697*

S G Thomas  
Licensing Officer





**Environment & Culture Directorate**  
Director: Michael Hainge

Regulatory Committee  
Council Chamber  
Brockington  
Hereford  
HR1 1SH

Your Ref:  
Our Ref: T JT/CE  
Please ask for: Mr T Thorne  
Direct Line / Extension: (01432) 261697  
Fax: (01432) 261982  
E-mail: tthorne@herefordshire.gov.uk

6 July 2009

Dear Councillors

**SPAR – 33-35 COLLEGE GREEN – HEREFORD HR1 1HW**

I am writing to make representations in relation to the application for review of the above premise's alcohol licence made by West Mercia Constabulary.

The full test purchase history at the store is as follows:-

| Date     | Sale/No Sale | Age of buyer |
|----------|--------------|--------------|
| 03/06/09 | SALE         | 15           |
| 15/12/08 | NO SALE      | 16           |
| 06/10/08 | NO SALE      | 16           |
| 19/08/08 | SALE         | 16           |
| 22/12/07 | SALE         | 15*          |

\*The facts surrounding the sale on 22/12/07 need to be specified and were as follows:-

We sent in two 15 year old girls to purchase alcohol together. When they came to the till the shop assistant said he couldn't serve them without ID but then said to a woman behind them in the queue that it would be OK if she bought the alcohol for the girls. The woman agreed and bought it for the girls but told the assistant he could get fined for it. The assistant insisted he had done nothing wrong and the sale took place. The shop assistant therefore committed an offence under S151(2) of the Licensing Act 2003.

The history effectively shows 3 sales in 5 attempts during an 18 month period. No test purchasing had been attempted at this store prior to December 2007. The Committee should be aware that in April this year the police specifically requested this store be included in our next test purchase campaign and hence it was on 3/6/09. I believe this police request was due to some underage drinking issues in that area, but of course this may not have anything to do with sales from this store.

Continued .....



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County of Herefordshire District Council, PO Box 233 Council Offices Bath Street  
Hereford HR1 2ZF

Main Switchboard (01432) 260000 - www.herefordshire.gov.uk



2.

The shop assistant interviewed as a result of the sale on 3<sup>rd</sup> June this year stated in interview that there was a Challenge 21 policy, but staff generally did not adhere to it. The seller was a Personal Licence Holder and also the Designated Premises Supervisor.

On 2<sup>nd</sup> July 2009 I visited the store and noticed there were a number of A4 size Challenge 21 signs displayed, however these only related to the sale of tobacco and cigarettes. There was one small Challenge 21 sign for alcohol on one of the two tills and another one in the alcohol display area. The refusals book was behind the counter and there seemed to be about 8 entries for 2009 and 15 throughout 2008.

Therefore in terms of additional licence conditions which may be imposed I respectfully suggest Challenge 21 or 25 be made a condition including a requirement to display clear and prominent signs to this effect at the entrance, in the alcohol display area and at the till. The Committee may of course justifiably seek to impose further conditions such as having a personal licence holder on site during certain hours and a term of suspension of the alcohol licence. For your information the 15 year old girl's test purchasing record overall is 4 sales in 26 attempts.

Yours faithfully



**TIM THORNE**  
**PRINCIPAL TRADING STANDARDS OFFICER**  
**ENVIRONMENTAL HEALTH & TRADING STANDARDS**



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**Putting People First Providing for our Communities Preserving our Heritage Promoting the  
County Protecting our Future**

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