

# AGENDA

## Regulatory Committee

Date: **Tuesday 1 February 2011**

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Time: **2.00 pm**

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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:

**Pete Martens, Committee Manager Planning & Regulatory**

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If you would like help to understand this document, or would like it in another format, please call Pete Martens, Committee Manager Planning & Regulatory on 01432 260248 or e-mail [pmartens@herefordshire.gov.uk](mailto:pmartens@herefordshire.gov.uk) in advance of the meeting.

# **Agenda for the Meeting of the Regulatory Committee**

## **Membership**

<b>Chairman</b>	<b>Councillor JW Hope MBE</b>
<b>Vice-Chairman</b>	<b>Councillor PGH Cutter</b>
	<b>Councillor CM Bartrum</b>
	<b>Councillor SPA Daniels</b>
	<b>Councillor JHR Goodwin</b>
	<b>Councillor RC Hunt</b>
	<b>Councillor Brig P Jones CBE</b>
	<b>Councillor PJ McCaull</b>
	<b>Councillor GA Powell</b>
	<b>Councillor A Seldon</b>

## **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

		Pages
1.	<p><b>APOLOGIES FOR ABSENCE</b></p> <p>To receive apologies for absence.</p>	
2.	<p><b>NAMED SUBSTITUTES (IF ANY)</b></p> <p>To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.</p>	
3.	<p><b>DECLARATIONS OF INTEREST</b></p> <p>To receive any declarations of interest by Members in respect of items on the Agenda.</p>	
4.	<p><b>MINUTES</b></p> <p>To approve and sign the Minutes of the meetings held on 4th &amp; 11th January 2011.</p>	1 - 10
5.	<p><b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH DO11 (PART) IN THE PARISH OF DORSTONE</b></p> <p>To consider an application under the Highways Act 1980, section 119, to make a Public Path Diversion Order to divert part of Footpath DO11 in the parish of Dorstone</p> <p>Ward: <b>Golden Valley North</b></p>	11 - 16
6.	<p><b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH WA55B (PART) IN THE PARISH OF WALFORD</b></p> <p>To consider an application under the Highways Act 1980, section 119, to make a Public Path Diversion Order to divert part of footpath WA55B in the parish of Walford.</p> <p>Ward: <b>Kerne Bridge</b></p>	17 - 22
7.	<p><b>REVIEW OF THE LICENSING POLICY AND CUMULATIVE IMPACT POLICY - LICENSING ACT 2003</b></p> <p>To review the Council's licensing policy in respect to carrying out its functions under the Licensing Act 2003 together with the cumulative impact of premises.</p>	23 - 148
8.	<p><b>CHANGES TO THE CONSTITUTION FOR REGULATORY COMMITTEE</b></p> <p>To note the changes to the Council's Constitution for the Regulatory Committee and delegate certain functions to the Regulatory Sub-Committee.</p>	149 - 162
9.	<p><b>PROCEDURAL ARRANGEMENTS</b></p> <p>To note the procedural arrangements for the meeting.</p>	163 - 164

10.

In the opinion of the Proper Officer, the following item will not be, or is likely not to be, open to the public and press at the time it is considered.

**RECOMMENDATION:** that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

1 Information relating to any individual.

2 Information which is likely to reveal the identity of an individual.

11. **DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - TO DETERMINE A MATTER ABOUT THE HOLDER OF A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

165 - 174

To determine a matter regarding a licensed hackney carriage/private hire driver.

# **The Public's Rights to Information and Attendance at Meetings**

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- 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.
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- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
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## **HEREFORDSHIRE COUNCIL**

**BROCKINGTON, 35 HAFOD ROAD, HEREFORD.**

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HEREFORDSHIRE COUNCIL

**MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 4 January 2011 at 2.00 pm**

**Present:** Councillor JW Hope MBE (Chairman)  
Councillor PGH Cutter (Vice Chairman)

Councillors: CM Bartrum, JHR Goodwin, RC Hunt, Brig P Jones CBE,  
PJ McCaull, A Seldon and JD Woodward

**98. APOLOGIES FOR ABSENCE**

Apologies for absence were submitted by Councillors SPA Daniels, GA Powell and JD Woodward.

**99. NAMED SUBSTITUTES (IF ANY)**

There were no named substitutes present at the meeting.

**100. DECLARATIONS OF INTEREST**

There were no declarations of interest made at the meeting

**101. MINUTES**

**RESOLVED:** That the Minutes of the meeting held on 7th December, 2010 be approved as a correct record and signed by the Chairman.

**102. SUPERINTENDENT HILL COMMANDER OF HEREFORDSHIRE POLICE**

The Chairman welcomed Superintendent Hill to the meeting. Superintendent Hill said that the police were working closely with the Council's licensing officers to deal with enforcement of the conditions whilst promoting the 'night time economy'. The police were involved in evening patrols with the officers and were developing a higher profile through visiting pubs and clubs on a regular basis. He outlined the proactive and high profile approach employed by the police in the town centres to identify potential trouble makers and deal with them before any problems arose.

**103. HIGHWAYS ACT 1980, SECTION 119, PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH EE6 (PART) IN THE PARISH OF EARDISLEY**

The Parks, Countryside and Leisure Development Manager presented a report about an application for a Diversion Order under the provisions of Section 119 of the Highways Act 1980 in respect of part of footpath EE6 in the parish of Eardisley. The footpath ran through the garden and along the front of the applicant's property and the proposal for a short diversion to overcome this. Informal consultations had been carried out and no objections had been received from consultees. There was an objection from a member of the public but the Parks, Countryside and Leisure Development Manager did not consider that it presented sufficient grounds to prevent a diversion Order being confirmed.

The applicant had carried out all pre-Order consultations and agreed to meet the costs involved. The proposal has been agreed by the various organisations, the parish council and the Local Ward Member. The proposal met the specified criteria as set out in Section 119 of the Highways Act 1980.

The Committee agreed to the proposals put forward by the Parks, Countryside and Leisure Development Manager.

#### **RESOLVED THAT**

**a Public Path Diversion Order be made under Section 119 in respect of part of Footpath EE6 at Eardisley, as illustrated in drawing number D344/126-06.**

#### **104. REVIEW OF THE EXISTING COUNCIL'S LICENSING POLICY AND ITS CUMULATIVE IMPACT POLICY - LICENSING ACT 2003**

A report was presented by the Licensing Officer regarding a review of the Council's licensing policy and its cumulative impact policy. He said that a requirement of the Licensing Act 2003 was that Local Authorities were obliged to review their licensing policies every three years. He said that he had undertaken a comprehensive review of the Licensing Policy, and the Cumulative Impact Policy for the Commercial Road area of Hereford which were introduced in early 2005. He advised that the Policies related to the control of public entertainment, alcohol sales and consumption, and prevention of associated anti-social behaviour in designated areas. Section 4 of the Act 2003 required Local Licensing Authorities to promoting the following licensing objectives:-

- a) the prevention of crime and disorder;
- b) public safety;
- c) the prevention of public nuisance
- d) the protection of children from harm.

The Licensing Officer provided the Committee with an addendum which expanded upon the section (18) dealing with Failed Test Purchases and the penalties which could be imposed upon those who sold alcohol and tobacco to underage persons. He outlined the consultation process and the responses which had been received.

The Committee considered all the points put forward by the Licensing Officer and felt that there was a need for an executive summary to the documents. It was also felt that more time was needed to give full consideration to the proposals and decided that the matter should be held in abeyance pending a workshop to be arranged about it.

#### **RESOLVED**

**That the matter be held in abeyance pending the arrangement of a workshop to give further consideration to the proposals.**

#### **105. PROCEDURAL ARRANGEMENTS**

The Committee noted the procedural arrangements for the following items to ensure that Officers and applicants received a fair hearing.

**RESOLVED: THAT under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Schedule 12(A) of the Act**



**106. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - TO DETERMINE WHETHER AN APPLICANT IS A FIT AND PROPER PERSON TO HOLD A DUAL DRIVER'S LICENCE. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

The Licensing Officer referred to agenda item No. 10 regarding an application for a dual hackney carriage/private hire licence. The applicant had not disclosed a previous conviction on his application form. The applicant provided the Committee with details of the circumstances which had led to him receiving a police caution and being convicted of an offence on a separate occasion. He felt that sufficient time had elapsed since the conviction with no other problems arising. He said that he was now a responsible family man and would not be involved in any further trouble. Mr Mooney of West Mercia Police provided the Committee with details about the conviction and caution.

Having considered all of the facts put forward by the officers and the applicant, the Committee decided that the applicant was not a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that his application for a Hackney Carriage/Private Hire driver's licence should be refused. He was advised that he could make a further application for a licence in twelve months time and that if he did not agree with the findings of the Committee, he was entitled to apply to lodge an appeal with the Magistrates Court.

**RESOLVED:**

**that the application for a dual hackney carriage/private hire drivers licence be refused.**

**107. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - TO DETERMINE AN APPLICATION FOR A DUAL DRIVER'S LICENCE. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

The Licensing Officer referred to agenda item No. 11 regarding an application for a dual hackney carriage/private hire licence. The applicant had disclosed his previous convictions on his application form and he provided the Committee with details about the circumstances which had given rise to them. He said that he had been trouble free since 2006 and had moved to Hereford to start a new life and explained why he felt that his licence should be granted.

Having considered all of the facts put forward by the officers and the applicant, the Committee decided that the applicant was not a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that his application for a Hackney Carriage/Private Hire driver's licence should be refused. He was advised that he could make a further application for a licence in six months time and that if he did not agree with the findings of the Committee, he was entitled to apply to lodge an appeal with the Magistrates Court. He said that he could provide references and was encouraged to do so if he made a further application.

**RESOLVED:**

**that the application for a dual hackney carriage/private hire drivers licence be refused.**



**MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 11 January 2011 at 10.00 am**

**Present:** Councillor JW Hope MBE (Chairman)  
Councillor PGH Cutter (Vice Chairman)

Councillors: CM Bartrum, SPA Daniels, JHR Goodwin, RC Hunt,  
Brig P Jones CBE, PJ McCaull, A Seldon and JD Woodward

**In attendance:** Councillor PJ Edwards

**108. APOLOGIES FOR ABSENCE**

Apologies for absence were submitted by Councillors PGH Cutter and GA Powell.

**109. NAMED SUBSTITUTES (IF ANY)**

There were no named substitutes present at the meeting.

**110. DECLARATIONS OF INTEREST**

Councillor R Hunt declared a personal interest in respect of the following item.

**111. APPLICATION TO REGISTER LAND AT ARGYLL RISE, BELMONT, HEREFORD AS A TOWN GREEN**

The Chairman welcomed those present to the meeting and introduced the Principal Lawyer (Corporate) who was presenting the report contained within the Agenda, Mr V Chapman Q.C. whose role would be to advise the Committee on the legal issues, Mr C Whitmey who was representing the applicants, Newton Farm Action Group and Ms M Ellis who was representing Herefordshire Housing Ltd (HHL).

The Principal lawyer (Corporate) explained the circumstances which had led to the application being made to the Council and presented a report for the Committee to consider whether land at Argyll Rise, Belmont, Hereford should be registered as a Town Green. He said that the land was part of a larger area which had been purchased for housing purposes in 1959 by the former Hereford City Council under the powers of the Housing Act 1957 and was subsequently laid out as open space as part of the surrounding housing development during the 1970s. In November 2002 the land was one of a number of open spaces included in a transfer of the Council's housing stock to HHL.

The Principal lawyer (Corporate) advised that at its meeting on 12 August 2008 the Committee had rejected a previous application to register the land because the Committee did not consider that there was conclusive evidence to support the legal criteria under which land can be registered as a Town Green. He explained what the criteria were and the different ways in which the parties involved had interpreted matters, the cases that they had put forward in support or against the application, and the legal opinions given. In recent months there had been more information brought to light including legal issues arising from a case regarding land in Leeds (Leeds Group Plc v Leeds city Council) which may have a bearing on the land at Argyll Rise. Because of these developments, a fresh application had been received from the applicants to register the land. He advised that the key issue was

whether the applicants could demonstrate that the land fulfilled the necessary criteria to be used as open space 'as of right', or whether it had been used 'by right'. If it was 'as of right' it could be registered as a Town Green which would prevent it from being developed for housing purposes.

Mr C Whitmey presented the case for the applicants and explained those matters from his report which supported the application. He referred to the views that had been expressed by members of the legal profession and the inspectors who had conducted public inquiries about the land. He said that there was much common ground between the applicants and HHL about the legal issues regarding the land but that it was the 'as of right' matter on which there was a difference of opinion. He pointed to the way in which the land had been laid out as open space and used by local residents for that purpose for a number of years. He explained those issues which he felt were of particular relevance and which supported the contention of the applicants that there was sufficient evidence to support the 'as of right' definition for the land to be registered as a Town Green.

Ms M Ellis QC, acting on behalf of HHL, presented her documentation which she said supported the view of HHL that the applicants had not provided evidence to fulfil the 'as of right' criteria for the land to be registered as a Town Green. The land and surrounding area had been purchased under the powers of the Housing Act 1957 and it was clear that although it had been laid out for use as open space, at no stage had ministerial consent been sought for it to be formally designated as such. She also felt that there were further doubts raised about the 'as of right' issue regarding the length of time the land had been used. The Commons Act 2006 allowed applications to be made within five years in relation to use "as of right" which had ceased before 6th April 2007, and that any use 'as of right' would have ended when the land was transferred to HHL. She also considered that the outcome of the appeal in the Leeds case could strengthen her contention that there was no 'as of right' and that should the Council decide otherwise in respect of Argyll Rise, this would leave it open to challenge.

Mr Chapman summed up the cases put forward by the participants who were given the opportunity to ask questions and in turn provide summaries of their cases. The Committee carefully considered all the points that had been made in the submissions. The Committee also considered suggestions from some of its Members that it might be advantageous to defer making a decision on the matter pending the outcome of the Leeds case, or to seek guidance from the Courts about the status of the land. The legal representatives and the applicant's representative gave their views and advice on the Committee taking either course of action.

Mr Chapman said that the Committee had been provided with an extensive amount of information and that highly detailed arguments had been put forward in support of the application and against it. He suggested that the Committee was faced with four possible ways of dealing with the matter:

1. to reject the application on the 'as of right' point;
2. to defer consideration of the application until the outcome of the Leeds case was known;
3. to seek the directions of the Courts about the 'as of right' status;
4. to accede to the application

The Committee discussed the alternatives and gave further careful consideration to the points made by the representatives and the advice received from Mr Chapman and the Principal lawyer (Corporate). Having considered the matter in some detail, the

Committee felt that on the balance of probabilities from the evidence provided, it could not be determined that the open space had been enjoyed 'as of right' and accordingly rejected the application.

**RESOLVED THAT:**

**An application to register land at Argyll Rise, Belmont, Hereford as a Town Green be rejected on the grounds set out in the Decision Notice attached to these minutes**

The meeting ended at 2.05 pm

**CHAIRMAN**



<b>APPLICANT'S NAME</b>	Newton Farm Town Green Action Group.
<b>APPLICATION TYPE</b>	The registration of land as a Town Green.
<b>COMMITTEE MEMBERS</b>	Councillor JW Hope MBE (Chairman) Councillors CM Bartrum, Mrs SPA Daniels, JHR Goodwin, RC Hunt, Brig. P Jones CBE, PJ McCaull, A Seldon and JD Woodward
<b>DATE OF MEETING</b>	11th January, 2011

Members of the Council's Regulatory Committee met to determine whether land at Argyll Rise, Belmont, Hereford should be registered as a Town Green. The Council is the Registration Authority for determining applications to register land as town or village greens.

At the meeting all the details about the application, the relevant legal aspects and the alternatives that were available to the Council, together with a recommendation that the application should be approved, were given careful consideration.

The circumstances which had led to the application being made to the Council were noted. The land was part of a larger area which had been purchased for housing purposes in 1959 by the former Hereford City Council under the powers of the Housing Act 1957 and was subsequently laid out as open space as part of the surrounding housing development during the 1970s. In November 2002 the land was one of a number of open spaces included in a transfer of the Council's housing stock to Herefordshire Housing Limited.

Mr C Whitmey addressed the Committee on behalf of the Newton Farm Town Green Action Group and Ms M Ellis QC on behalf of Herefordshire Housing Limited which was contesting the application. The Committee was advised by Mr V Chapman QC.

The Committee determined the application as follows:

- 1. The Regulatory Committee rejects the application to be found in Appendix 8 of the Agenda for the meeting, under Section 15 of the Commons Act 2006.**
- 2. The application is rejected because the Committee is not satisfied that use of the application land during the 20 year period relied upon was "as of right". The Committee considers that the application land was a "recreation ground" and/or an "open space" laid out and maintained for public use under the Housing Act 1957 Sections 93 and/or 107 and the Housing Act 1985 Sections 12 and/or 13 to which the users had a statutory right of access. Use for lawful sports and pastimes was therefore "by right" or "of right" rather than "as of right".**
- 3. The Committee has weighed carefully the issues raised which go towards the possibility of deferring its decision in the light of the pending judgement on the Court of Appeal case of Leeds Group plc v**

**Leeds City Council or to seek the directions of the Court. Given its decision to reject the application however, the Committee does not consider it appropriate in the public interest to defer its decision for either reason.**

- 4. The Committee places on record its gratitude to the advocates in the Case for their clear detailed and careful work which has enabled this decision to be made.**

Signed.....Councillor JW Hope MBE, Chairman of the Regulatory Committee, 11 January, 2011



<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>1 FEBRUARY 2011</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH DO11 (PART) IN THE PARISH OF DORSTONE</b>
<b>PORTFOLIO AREA:</b>	<b>Highways and Transportation</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Golden Valley North

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath DO11 in the parish of Dorstone

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

**That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D364/119-11**

### **Key Points Summary**

- An application was made to divert footpath DO11 in February 2004 by the owners of 'Primrose Hill'.
- DO11 travels through the building of Primrose Hill.
- The proposed diverted route will travel through a neighbouring garden and paddock to which the landowners agree.
- The applicants have agreed to pay costs.
- No objections have been received to the proposals.

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Further information on the subject of this report is available from  
Will Steel Public Rights of Way Manager on (01432) 845980

## **Alternative Options**

- 1 Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so. The Council could reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council.

## **Reasons for Recommendations**

- 2 The public path order should be made because it is felt that it meets the criteria set out in s 119 of the Highways Act and there have been no objections at pre-order consultation stage.

## **Introduction and Background**

- 3 Before an order is made to divert a footpath under the Highways Act, it is necessary to gain a decision from the Regulatory Committee as they have the delegated authority to make this decision.

## **Key Considerations**

- 4 Mr Birchenough, who is the landowner, made the application on 9<sup>th</sup> February 2004. The reasons given for making the application were that the landowner felt that the definitive map had been drawn incorrectly in that the path travels through their house, 'Primrose Hill'. However this is not the case as it would appear the house has been extended over the line of the footpath sometime in the past.
- 5 The applicant has carried out all pre order consultation. The original proposal was amended following comments from user groups and the adjoining landowner and resubmitted for consultation. There were no objections from the subsequent consultation and the adjoining landowners, Mr and Mrs Berman, have agreed to the amended proposals.
- 6 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order.
- 7 The local member, Cllr. Price, does not object to the proposals.
- 8 The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in that:
  - The proposal benefits the owner of the land crossed by the existing path.
  - The proposal is not substantially less convenient to the public.

## **Community Impact**

- 9 Dorstone Parish Council has been consulted and accepts the proposals as set out in the Drawing No: D364/119-11(i).

## **Financial Implications**

- 10 The applicants have agreed to pay all necessary advertising and administration costs.

## **Legal Implications**

- 11 Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so. However, if the order was not made as suggested, the existing right of way would remain obstructed by the building.

## **Risk Management**

- 12 There is a risk that any subsequent diversion order made may receive objections which may result in a public inquiry. This would increase the pressure on staff time. However, this risk has been minimised by the pre-order consultation to which there were no objections.

## **Consultees**

- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. Price
- Dorstone Parish Council.
- Statutory Undertakers.

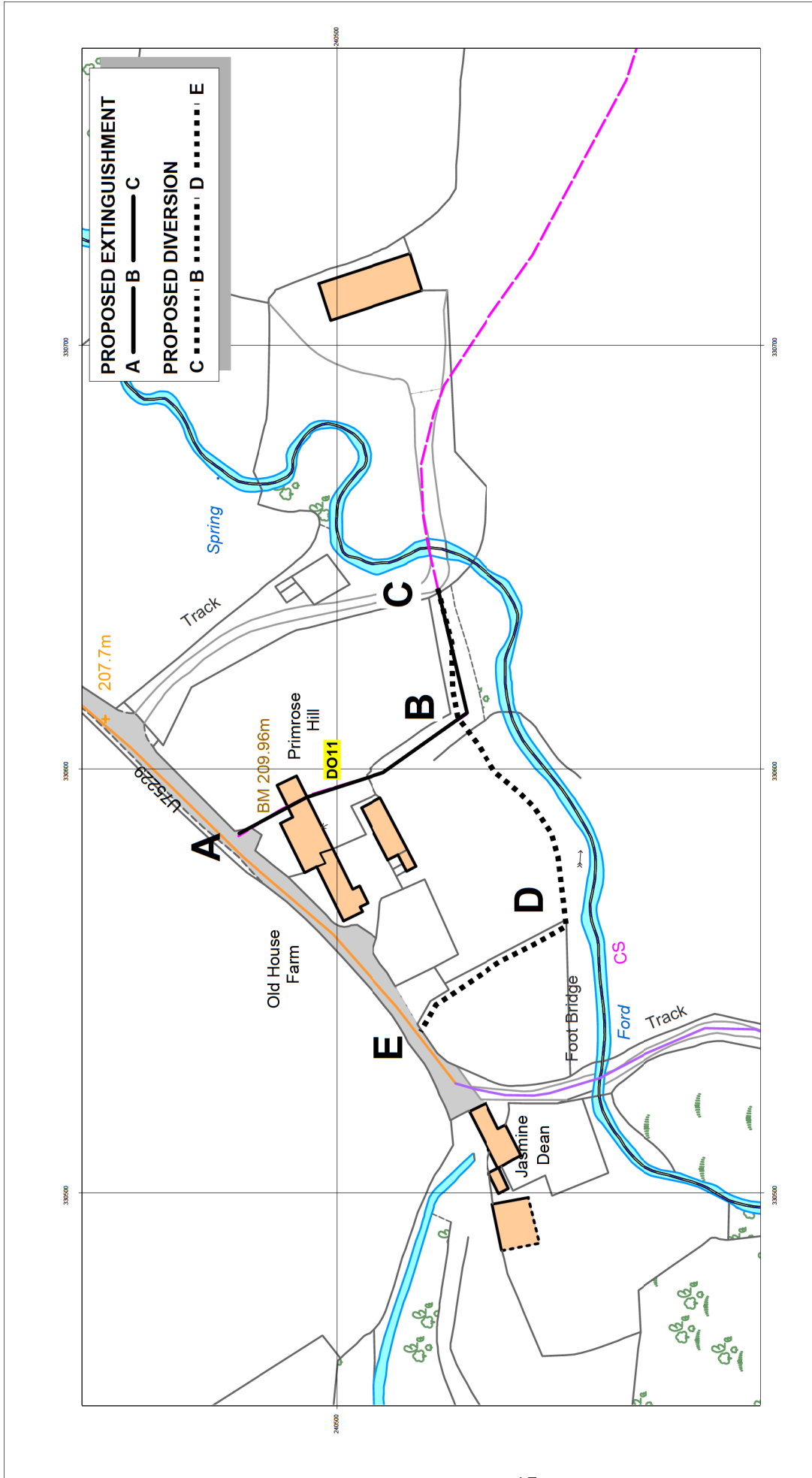
## **Appendices**

Order Plan, drawing number: D364/119-11(i)

## **Background Papers**

- None identified.





Amey Herefordshire  
 Unit 3, Thorn Business Park  
 Rotherwas Industrial Estate  
 Hereford HR2 6JT  
 Tel.: (01432) 845900  
 Email: ameyherefordshire@amey.co.uk

	PUBLIC FOOTPATH
	PUBLIC BRIDLEWAY
	RESTRICTED BYWAY
	BYWAY OPEN TO ALL TRAFFIC
	PARISH BOUNDARY

**LOCATION PLAN - PARISH OF DORSTONE  
 PROPOSED DIVERSION OF PUBLIC FOOTPATH  
 DO11 (PART)**

DWG No.: D364/119-11 (i)  
 SCALE 1:1250 (A4)



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<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>1 FEBRUARY 2011</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH WA55B (PART) IN THE PARISH OF WALFORD</b>
<b>PORTFOLIO AREA:</b>	<b>HIGHWAYS AND TRANSPORTATION</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Kerne Bridge

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath WA55B in the parish of Walford.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

**That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D388/395B**

### **Key Points Summary**

- An application to divert footpath WA55B was made by the landowner, Mr M Brain, in April 2008.
- The existing legal line of the footpath is currently obstructed by a garage and runs through the applicants' garden.
- The proposed route of the path will follow the route currently walked on the ground around the boundary of the property.
- The applicant has carried out pre-order consultation to statutory undertakers and user groups. There have been no objections to the proposals.

### **Alternative Options**

- 1 Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so. The Council could reject the application on the

Further information on the subject of this report is available from  
Will Steel, Public Rights of Way Manager 01432 845980

grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council. However, if such an order is not made, the existing route of the path will remain obstructed by the garage.

## **Reasons for Recommendations**

- 2 The public path order should be made because it is felt that it meets the criteria set out in s 119 of the Highways Act and the Council's Public path order policy and there have been no objections at pre-order consultation stage.

## **Introduction and Background**

- 3 Before an order is made to divert a footpath under the Highways Act 1980, it is necessary to gain a decision from the Regulatory Committee as they hold the delegated authority to make this decision

## **Key Considerations**

- 4 Mr M Brain, who is the landowner, made the application on 14<sup>th</sup> of April 2008. The reasons given for making the application were to eliminate a number of obstacles, providing a flatter surface so improving access and use.
- 5 The applicant has carried out all pre order consultation. The proposal has general agreement and the adjoining landowners, Mr Brown and Mrs Burren-Brown, whose property is also affected by the application (Maytree Cottage) agreed to the proposals.
- 6 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order.
- 7 The local member, Cllr J G Jarvis does not hold any objections to the proposals.
- 8 The proposed diversion meets the specified criteria as set out in Council policy and section 119 of the Highways Act 1980 in particular that:
  - The proposal benefits the owner of the land crossed by the existing path.
  - The proposal is not substantially less convenient to the public.

## **Community Impact**

- 9 Walford Parish Council were consulted as part of the pre-order consultation and support the proposals, having been in place on the ground for some time.

## **Financial Implications**

- 10 The applicant has agreed to pay all necessary costs associated with the making of this order (including admin fees, advertising costs and any works necessary to bring the order into being).



## **Legal Implications**

- 11 Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so

## **Risk Management**

- 12 There is a risk that any order made could receive objections which would require referral to the Secretary of State for a decision. This would thus increase demands on resources and officer time. However, this risk has been minimised by carrying out the pre-order consultation to which there were no objections.

## **Consultees**

- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. J G Jarvis
- Walford Parish Council.
- Statutory Undertakers.

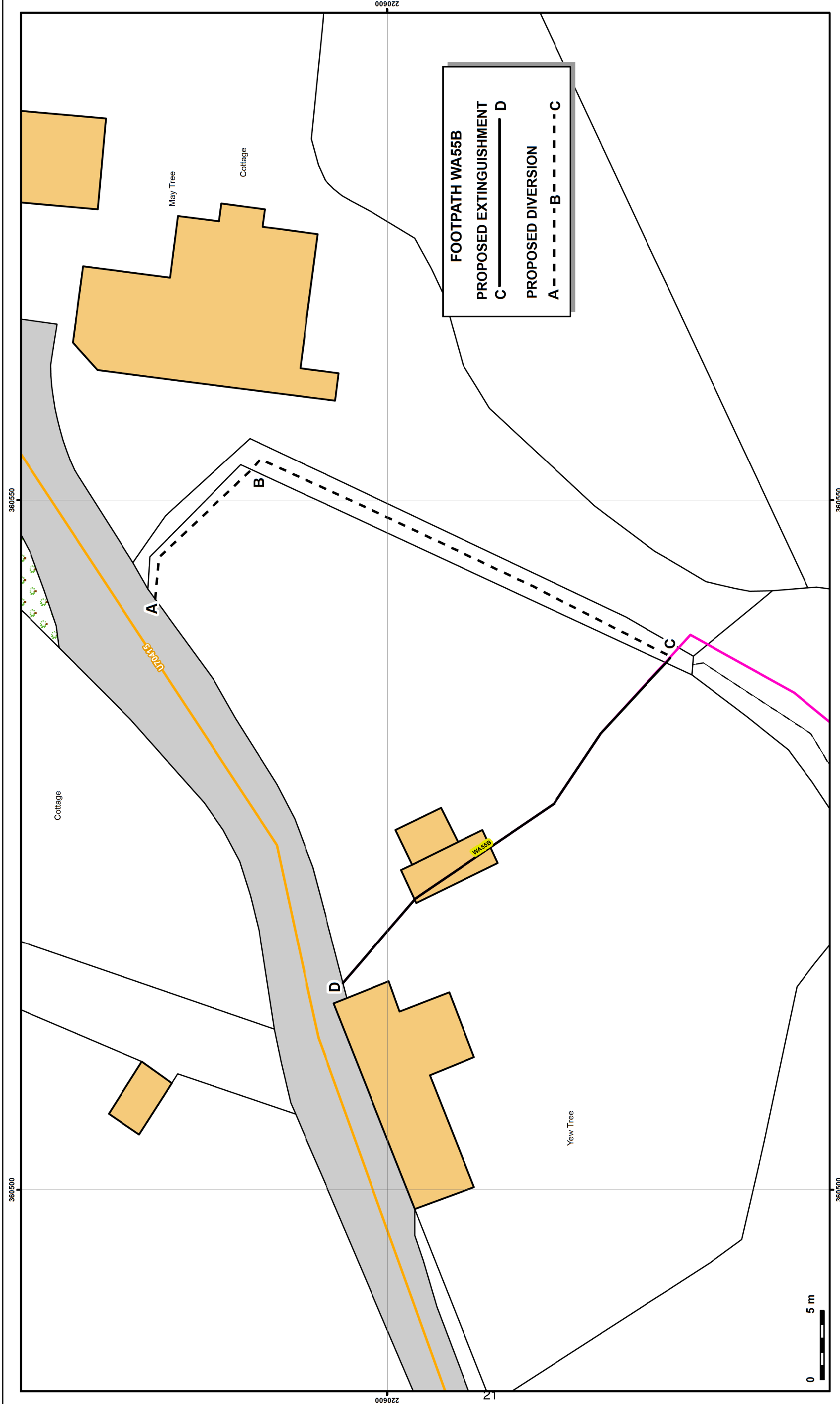
## **Appendices**

- Order Plan, drawing number: D388/395B and Order and Schedule.

## **Background Papers**

- None identified.





**FOOTPATH WA55B**

**PROPOSED EXTINGUISHMENT**  
 C ——— D

**PROPOSED DIVERSION**  
 A - - - - B - - - - C

**PUBLIC FOOTPATH** (Pink line)

**PUBLIC BRIDLEWAY** (Green line with cross-ticks)

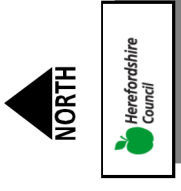
**RESTRICTED BYWAY** (Green line with 'V' ticks)

**BYWAY OPEN TO ALL TRAFFIC** (Black line with 'V' ticks)

Amey Herefordshire  
 Unit 3, Thorn Business Park  
 Rotherwas Industrial Estate  
 Hereford HR2 6JT  
 Tel.: (01432) 845 900  
 Email: ameyherefordshire@amey.co.uk

**LOCATION PLAN- Highways Act 1980, Section 119**  
 Herefordshire Council. Footpath WA55B (Part)  
 Parish of Walford  
 Public Path Diversion Order 2011

**DWG No.: D388/395B**  
**SCALE 1:250 @ A3**



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<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>1 FEBRUARY 2011</b>
<b>TITLE OF REPORT:</b>	<b>REVIEW OF THE LICENSING POLICY AND CUMULATIVE IMPACT POLICY – LICENSING ACT 2003</b>
<b>PORTFOLIO AREA:</b>	<b>ENVIRONMENTAL HEALTH &amp; TRADING STANDARDS PUBLIC HEALTH DIRECTORATE</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Countywide

### **Purpose**

1. To review the Herefordshire Council licensing policy in respect to carrying out its functions under the Licensing Act 2003 (Appendix 1 – this will be sent separately to Members with tracked changes).
2. To review the special licensing policy for the cumulative impact of premises (Shown as Appendix 1 in the licensing policy).

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

**THAT the Committee adopt the Policy as presented subject to any ratification required by Council.**

### **Alternative Options**

1. Refuse to adopt the Policy as presented
2. Adopt the policy but with amendments
3. Reach some other decision.

### **Key Points Summary**

- The policy has been the subject of extensive public consultation.
- A summary of the responses received can be found at Appendix 2.

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

## Options

- 1
  - a. Adopt the Policy as presented
  - b. Refuse to adopt the Policy as presented
  - c. Adopt the policy but with amendments
  - d. Reach some other decision

## Reasons for Recommendations

- 2 The policy has been widely consulted on with members of the public and interested parties. Any comments made have either resulted in amendments or the reason is shown why the suggested amendment cannot be included.

## Introduction and Background

- 3 Members will recall that this matter appeared before them on 4<sup>th</sup> January 2011 when the matter was deferred until this meeting in order to allow members to attend a workshop to discuss it more fully. This workshop took place on 18 January and as a result some changes were made to the policy.
4. The Licensing Section was also asked to extend the period of consultation until the 20<sup>th</sup> January to allow Town and Parish Councils more time to respond. They were advised of this by email.
- 5 Section 4 of the Licensing Act 2003 requires the licensing authority to carry out its functions under the Act with a view to promoting the following licensing objectives:-
  - a) the prevention of crime and disorder;
  - b) public safety;
  - c) the prevention of public nuisance
  - d) the protection of children from harm.
- 6 Section 5 of the Licensing Act 2003 requires the local authority to determine every three years its policy with respect to the exercise of its licensing functions and publish a statement of that policy before the beginning of the period. The last licensing policy was reviewed on 14 December 2004.
- 7 Before determining the policy the licensing authority must consult –
  - a) The chief officer of police for the licensing authority's area.
  - b) The fire authority for that area,
  - c) Such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority.

- d) Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
- e) Such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
- f) Such other persons as the licensing authority considers to be representative of businesses and residents in its area.

8 Section 182 of the Act requires the Secretary of state to issue guidance for licensing authorities on the discharge of their functions under the Act. This guidance states that: - *'the authority must have regard to the Secretary of State's Guidance when making and publishing its policy. A licensing authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives'*.

### **Cumulative impact policy.**

9. "Cumulative impact" is not mentioned specifically in the 2003 Act but means in this guidance *'the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area'*. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement.

10 The steps to be followed in considering whether to adopt a special policy within the statement of licensing policy are summarised below: -

- Identify concern about crime and disorder or public nuisance,
- Consider whether there is good evidence that crime and disorder or nuisance are happening and are caused by the customers of licensed premises, or that the risk of cumulative impact is imminent,
- Identify the boundaries of the area where problems are occurring,
- Consult with those specified in section 5(3) of the 2003 Act, and subject to the outcome of the consultation, and
- Include and publish details of special policy in licensing policy statement.

11 The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

### **Consultation.**

12 Both the Policy and the Cumulative Impact Policy have been extensively consulted upon.

13 The chief officer of police for West Mercia has been consulted.

14 The chief fire officer for Hereford and Worcester Fire & Rescue Service was consulted along with their policy officer.

15 All other responsible authorities have been consulted.

- 16 All premises licence and personal licence holders were written to as part of the consultation process.
- 17 All the elected members were notified of the policy by email with a link to the authority's consultation page. A hard copy was then supplied for the members' room at Brockington. A Workshop was also delivered by officers on 18 January 2011 for members so that the consultation could be as full and meaningful as possible. This was well attended and comments were taken on board (See Appendix C).
- 18 All parish councils and town councils were notified of the policy consultation and the consultation time period extended at the behest of members on the 4 January Regulatory meeting.
- 19 NHS Herefordshire have been consulted.
- 20 All comments received were collated and where appropriate changes were made to the licensing policy.

## **Community Impact**

- 21 The policy may impact on the Community.

## **Appendices**

- 22
  - a. Statement of Licensing Policy
  - b. Consultation response
  - c. Amendments made to consulted policy following the 18 January workshop with members

## **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.



# The Licensing Act 2003



## Herefordshire Council: Statement of Licensing Policy 2011/2013



## Environmental Health & Trading Standards

**COMING INTO EFFECT 1<sup>st</sup> February 2011**

LICENSING UNIT  
COUNTY OFFICES  
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Tel: 01432 260105

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## **FOREWORD BY COUNCILLOR JOHN HOPE, MBE, CHAIR OF LICENSING COMMITTEE**

This is the third Statement of Licensing Policy produced by the Herefordshire Council as the Licensing Authority under the Licensing Act 2003. It is a legal requirement that this policy should be reviewed at least every three years or more frequently if required.

Over the preceding two policies the act has continued to evolve and in some respect matters have become clearer whilst in others what appeared to be clear has been diluted through legal challenge. I am not convinced that the Act has achieved all that it set up to do so. However, in the very near future undoubtedly some aspects of the act will change and again this will mean a revisiting of this policy. This product is the product of wide consultation from all sections of the community.

The scope of this Policy covers the following:

- Retail sales of alcohol
- The supply of alcohol by or on behalf of a club, or to the order of a member of the club
- The provision of regulated entertainment
- The provision of late night refreshment

The purpose of the Statement is to set out the policies and procedures that Herefordshire will apply in relation to its functions under the Act, most particularly regarding applications for new licences, applications to vary existing licences and applications to review licences.

Everything the Council does is underpinned by the requirement to promote the four licensing objectives. These four fundamental objectives are:

- The prevention of crime and disorder,
- Public safety,
- The prevention of public nuisance, and
- The protection of children from harm.

All parties have a duty to promote these objectives and we will continue to work closely with statutory responsible authorities, licence holders and their staff, SIA door staff and other interested parties to include members of the public. The Policy highlights the need for those operating licensed premises to be aware of the effect their premises may have on local residents and to make every effort to minimise anything that adversely affects residents' quality of life.

We will expect anyone appearing in front of a Licensing Sub-Committee that adjudicates on opposed applications to be fully aware of the terms of this policy in order to show that they too are fulfilling their statutory duty to promote the licensing objectives.

In particular, in reviewing its Licensing Policy the Council consulted on whether there was a need to continue with the Cumulative Impact Policy in relation to Hereford City. In essence this decision applies a presumption against extending or granting licences in the areas to which the policy applies. This special policy will not prevent applications being made in these areas and each case will be determined on its own merits but applicants will have to comprehensively demonstrate in their application that their proposals will not add to existing problems in the area. Full details and maps of the areas are contained in the text of the policy.

We recognise the very positive contribution that well managed premises can make to the Council's wider objectives through contributing to the economy and helping to tackle crime and disorder.

Through the implementation of the Licensing Act, Statutory Government Guidance and this Licensing Policy and by working closely with both regulatory and business partners we will continue to provide advice and guidance as well as compliance of standards for both residents and businesses in the County to ensure that licensed premises are well managed



and have a positive impact on the cultural, community, leisure and entertainment facilities within Herefordshire.

This Statement will be widely circulated and will be available at all times on the Council's website.



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From whom	Comment	Paragraph Number	Response
West Midlands Ambulance Service	<p>Section 21.17 First Aid</p> <p>Guidance should be sought from the care Quality Commission – CQC.</p> <p>They are currently in the process of regulating ambulance services. Unless the provider is registered with CQC they will be unable to supply cover at the event.</p>	21.17	Paragraph amended to meet suggestion
ACS	<ol style="list-style-type: none"> <li>1. Thank you for offering ACS (Association of Convenience Stores- Annex 1) an opportunity to respond to your draft Licensing Policy Statement. ACS is the voice of the convenience retail sector, representing over 33,500 local shops. Alcohol is a major product category for convenience stores and ACS is committed to supporting our members to ensure they retail alcohol responsibly. ACS is also closely involved with the creation of central alcohol policy with Government. Therefore ACS has developed significant understanding of the implications of licensing reform for local shops and off licences.</li> <li>2. Our members deal with a wide variation of different local licensing policies. We have found that the most successful policies invariably involve local authorities and retailers working together in partnership to create a fair and effective licensing policy. We advise all local authorities to maintain a dialogue with their local retailers and see them as part of the solution rather than part of the problem.</li> <li>3. Our members encounter a wide variety of different approaches between licensing authorities, which can cause problems for businesses. We would encourage wherever possible for local</li> </ol>		

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	<p>authorities to share best practice and to when appropriate promote consistency between different areas.</p> <p>4. Below are comments raised on specific licensing policy issues:</p> <p><b>Mandatory Code</b></p> <p>5. The Policing and Crime Act 2009 created a mandatory code of practice for all alcohol retailers. While four of the mandatory licence conditions relate solely to the on trade, one of the conditions also applies to the off trade. This states that: <i>all those who sell alcohol must have an age verification policy in place requiring them to check the ID of anyone who looks under 18 to prevent underage drinking which can lead to anti-social behaviour and put young people at risk of harm.</i></p> <p>6. ACS works closely with other industry stakeholders to ensure that there are strong and consistent proof of age schemes in place that can be used across the trade. For example, ACS helped create the No ID No Sale scheme. ACS is also a member of the Retail Alcohol Standards Group (RASG). RASG created the Challenge 21 campaign and recently coordinated its launch across the country as Challenge 25. The policy recommends that anyone who appears under 25 is challenged for ID.</p> <p>7. While the mandatory condition demands a proof of age scheme is in place, the condition does not prescribe which schemes retailers have to adopt. We support this flexibility for retailers and strongly discourage a more restrictive approach. The main responsibility of alcohol retailers is to ensure that they do not sell alcohol to those underage. They should not be dictated to on how to achieve compliance.</p>	23.16	Already included within policy
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	<p><b>Form of Identification</b></p> <p>8. It is important that there is consistency on which proof of age documents retailers are allowed to accept. ACS is a founding member of the PASS and board member of the CitizenCard proof of age scheme. CitizenCard has given out over 1.8 million cards, and offers young people who do not have a passport or drivers licence a valid form of ID. Particularly in society where identity fraud is a growing problem, it is even more important to offer a form of ID that it is not a passport or driving licence since these can facilitate fraud if lost.</p> <p>9. Government and most local authorities accept passport, driving licence and PASS card as valid proof of age. ACS urges all local authorities to adopt this position. The PASS hologram on a card is the hallmark indicating that the card issuer has passed a stringent and rigorous audit process carried out by Trading Standards Officers and that the card may be relied upon.</p> <p>10. We would also urge Local Authorities to consider how best to tackle fraudulent ID, in consultation with local retailers</p> <p><b>Community Alcohol Partnerships</b></p> <p>11. Through our membership of RASG, ACS is also heavily involved in the Community Alcohol Partnerships (CAP) initiative. These innovative projects aim to tackle the local problems with underage drinking and anti social behaviour through partnership working. CAPs brings off-trade retailers together with local</p>	<p>23:30</p>	<p>Already included in policy</p> <p>Herefordshire do not accept PASS as most of the trade are against this scheme</p> <p>We already work in partnership with premises in respect of false ID</p>
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	<p>authorities, police and schools to tackle underage drinking and proxy purchasing in a holistic way. During the schemes test purchases are not carried out; instead any problems are dealt with using communication and support networks.</p> <p>12. The project has been independently evaluated, finding a decline in offences of criminal damage some 6% greater than in non pilot areas. The evaluation is attached (Annex 2). If you would like further information about CAPs please contact ACS.</p> <p><b>Test Purchasing</b></p> <p>13. ACS believes that the Partnership approach, where retailers are not penalised but are educated and supported, is a more effective way to tackle alcohol related problems. However we recognise that test purchasing is a tool at the disposal of local authorities and that some will find it necessary to use test purchasing to tackle the small minority of problem premises that repeatedly sell alcohol to children.</p> <p>14. However if test purchasing is utilised it must be done in accordance to Government guidelines. It must be led by clear intelligence that there is a problem in with underage purchasing on a premises. It also needs to be ensured that test purchasing will target both on and off trade when required.</p> <p>15. It is important that test purchasing does not descend into a tool to “catch-out” responsible retailers, who make a genuine mistake. Guidance issued by LACORS on how to conduct a test purchase must be adhered too. Using an individual who looks much older than 18 and allowing them to lie or show fake ID is unacceptable.</p>	18.3	The policy says that we will review on the first occasion. This is aimed at education rather than prosecution.
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	<p>16. If a retailer does fail a test purchase, it is important that the first recourse is constructive support, rather than overzealous punishment. Punishments are effective only when they are proportionate. We support tough sanctions against persistent offenders.</p> <p>17. We also strongly advise local authorities to recommend that retailers are notified of any test purchases they have passed. This helps stores to recognise if their policy to prevent underage sales is working and facilitates a partnership based relationship.</p> <p>18. ACS supports the Local Better Regulation Office (LBRO) on Trading Places Scheme. The scheme places local authority employees with retailers so that they can see the challenges retailers face regarding underage sales on a daily basis and also understand what the retail trade is doing to tackle them. ACS advises Local Authorities to contact LBRO if they wish to partake in the scheme.</p> <p><b>Crime</b></p> <p>19. There has been proposals is some draft licensing policy statements that retailers should restrict where they place alcohol to prevent underage theft. Although it may be useful to make retailers aware of best practice, they should not be told where to place their products the sell. Ultimately the retailer will be aware of where best to place products to ensure security.</p> <p>20. It is also important that retailers are not penalised for thefts that occur in store. If alcohol is being stolen from a store then it is not the retailers fault and fully culpability must fall onto the culprit. In these incidences the retailers are victims and should be</p>	
	<p>Not included in policy but dealt with by way of representation where appropriate</p>	

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	<p>supported. Any move to penalise retailers for thefts will be counter productive, as retailers will be discouraged from reporting crime.</p> <p><b>Underage Drinking and Proxy Purchasing</b></p> <p>21. Retail staff often face abusive or intimidating behaviour when refusing a sale. It is important that they feel sufficiently supported in their role as enforcers and local authorities have a role to play in this. Underage drinkers need to understand that it is against the law and unacceptable for them to attempt to buy alcohol. The wider community need to understand that it is unacceptable and illegal to buy or supply alcohol to a minor.</p> <p>22. Being given alcohol by a parent or friend, or buying alcohol from someone else is the most common way for underage drinkers to buy alcohol. The proportion of pupils who were given alcohol by a parent or friend has increased from 9% in 1998 to 24% in 2008. 18% of young drinkers buy alcohol from someone else, compared with 6% who buy from the licensed trade. It is clearly a route of supply which needs to be tackled.</p> <p>23. While it is currently an offence to proxy purchase or attempt to buy alcohol while underage, there is little enforcement of these laws. Local licensing policies should address these issues and explore the most effective way to combat these crimes in community, rather than just targeting all their enforcement on licensees.</p>		<p>This issue is extremely resource intensive but it is tackled where the problem is identified.</p>





# APPENDIX C

## AMENDMENTS TO THE LICENSING POLICY MADE AFTER THE MEMBER WORKSHOP (18<sup>th</sup> January 2011)

- 1.1** This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and guidance issued under Section 182 of the Act by the Home Office..
- 3.1** This Policy will take effect from 1<sup>st</sup> February 2011 and will be subject to periodic review and consultation. It is likely to be further reviewed in the near future due to the proposed changes in the Licensing Act.
- 3.4** The Licensing Authority has also taken into account the guidance issued by the Department of Home Office under section 182 of the Act with regard to licensing policies.
- 4.1** This Licensing Authority when determining applications, authorisations and notices that have attracted relevant representations, and review applications, will normally work within the framework of this Policy and also take into account the Guidance issued by the Home Office under section 182 of the Act. However, this Licensing Authority reserves the right to depart from this Policy and the Guidance whenever it considers it correct and appropriate to do so.
- 6.2** Representations can be made by an 'interested party' about certain applications made to the Licensing Authority. An interested party means any of the following:
- (a) a person living in the vicinity of the premises,
  - (b) a body representing persons who live in that vicinity,
  - (c) a person involved in a business in that vicinity,
  - (d) a body representing persons involved in such businesses
  - (e) an elected member of the Licensing Authority
- In determining whether a person is an interested party, the Licensing Authority shall take into account the following principles:
- Each case will be decided upon its merits.

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- This Licensing Authority will not apply a rigid rule to its decision making,
- This Licensing Authority will give the widest possible interpretation to the term 'business'
- This Licensing Authority will take into account any guidance provided by the Home Office under section 182 of the Act on the matter.

Interested parties may also apply for a review of a Premises Licence or a Club Premises Certificate.

### 6.6 Relevant Representation

A relevant representation has been defined in a number of stated cases which have appeared before the High Court and which are binding on the Licensing Authority. Of particular note is the case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court and The Sauehall Massie Conservation Society and Wirral Metropolitan Borough Council [2008] EWHC 838 (Admin)*. In brief it was said that a licensing authority should look for some real evidence to support the representation made. Fears and speculation as to what might happen will not be enough. Whilst this case remains relevant, Herefordshire Council will expect a representee to give evidence of some description to substantiate a conclusion that the variation will infringe the licensing objectives.

6.7 Furthermore the case *R (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court [2009] EWHC 1996 (Admin)* established the fact that a representation made in relation to public nuisance must be more than a private nuisance and that a single interested party is incapable in law of constituting "the public" for the purposes of satisfying the test of "public nuisance" pertinent to the licensing objective.

6.8 Therefore the Licensing Authority will deem that any representation which is not supported by any evidence of some description is not a



# APPENDIX C

relevant representation. Acceptable evidence will normally relate to real and reliably witnessed events at the premises. However evidence may also be considered when arising from very similar events which have taken place at another location and were run by the same applicant / promoters. An aggrieved representee whose evidence has not been accepted by the Licensing Service can informally appeal to his or her councillor for assistance when a representation has not been accepted.

**6.9** Furthermore, where only one public representation is received in respect of the public nuisance licensing objective, then this too will be deemed not to be relevant on the grounds that it is a private nuisance. However, in such a circumstance the licensing service will refer a single complainant to the environmental health service for investigation as a potential statutory nuisance.

**6.15** The Licensing Authority will not deal with any anonymous representations made by members of the public, unless either requested in writing to do so or if the Licensing Authority feel that by disclosing the persons details natural justice may be effected.

**7.2** The authority would accept a publication which is circulated in the immediate vicinity of the premises or in the Hereford Times or the Journal.

**8.4** Applicants are recommended to acquaint themselves with:

- The contents of this Policy dealing with the 4 licensing objectives
- The Guidance issued by the Guidance issued by the Home Office under section 182 of the Act and the other guidance available on Government websites.

## **25 OTHER REFERENCES & GUIDANCE**

## **APPENDIX C**

Applicants are recommended prior to making an application to have regard and to take into consideration in their application the following documents (as appropriate to their premises and the activities that will be provided):-

- The Guidance and information on licensing provided on the website of the Home Office

## *Section 1: Summary*

*This explains that this Policy has been prepared in accordance with guidance, who the Licensing Authority is and what the aim of the Licensing Authority is.*

### **1. INTRODUCTION**

**1.1** This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and guidance issued under Section 182 of the Act by the Home Office.

**1.2** The licensing authority is the '*Council for the County of Herefordshire*' which shall be referred to as "Herefordshire Council".

**1.3** Herefordshire Council (in its role as Licensing Authority) is responsible for the licensing of regulated activities under the Licensing Act 2003. This document sets out the principles that the Licensing Authority will apply when making decisions.

**1.4** The Licensing Authority's aim is for the licensing process to allow the retail sale/supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment in a way which ensures compliance with the objectives of the Act, which is not to the detriment of residents, nor gives rise to loss of amenity.

**1.5** It is the Licensing Authority's aim to facilitate this through the licensing process by well run and managed premises, and by licence holders demonstrating and taking action to ensure that the use of their licences will not be to the detriment of any of the licensing objectives. Whilst licensing may not be considered a mechanism for the general control of anti-social behaviour by individuals beyond the direct control of the Premises Licence holder or Club Premises Certificate holder, it is recognised that issues such as anti-social behaviour may be as the direct result of the operation of the premises. Apart from the licensing process, it could be perceived that there

may be a number of other mechanisms which could be available for addressing issues of unruly behaviour. Such mechanisms may include:-

- planning controls,
- measures to create a safe and clean environment by means of partnership between local businesses and the Council,
- powers of the Council to designate parts of Herefordshire as places where alcohol may not be consumed publicly, and the confiscation of alcohol from adults and children in designated areas by the police,
- police enforcement of the normal law concerning disorder and anti-social behaviour including issuing fixed penalty notices,
- the designation of alcohol exclusions, and
- powers to close down instantly for up to 24 hours any licensed premises or temporary events on grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises.

**1.6** However, this Licensing Authority realises that the above measures may not be sufficient to deal with the promotion of the licensing objectives in relation to a particular licensed premises.

**1.7** The Licensing Authority recognises that the licensed entertainment business sector and community licensed facilities in Herefordshire contribute to the local economy and social infrastructure, but that this has to be balanced with the impact of such activities on the licensing objectives. The Licensing Authority wishes to encourage licensees to provide a wide range of entertainment activities throughout their opening hours and to promote live music, dance, theatre etc. for the wider cultural benefit. They are a factor in maintaining a thriving and sustainable community, which is one of the Council's aims.

**1.8** Herefordshire is a mixed commercial and residential area, with many areas lying in tranquil rural surroundings, whose amenity the Council has a duty to protect, and one of the Council's aims is to promote safer and stronger

communities. These factors may be taken into account in relation to applications that may have a material impact on a vicinity.

- 1.9** This policy will set out the general approach that the Licensing Authority will take when it considers opposed applications. It will not undermine the right of any individual to apply for a variety of permissions nor undermine the right to have any such application considered on its individual merits. Nor will it override the right of any 'responsible authority' or 'interested party' to make relevant representations on an application or seek a review of a licence where provision has been made for them to do so in the Act.
- 1.10** This Policy has been prepared to assist the Licensing Authority in reaching a decision on applications, setting out those matters that will normally be taken into account. It also seeks to provide information for applicants, residents, businesses in the County and the responsible authorities on the Licensing Authorities expectations.
- 1.11** Every opposed application will be determined on its own merits and this Licensing Authority reserves the right to deviate from a police recommendation should it ever consider it correct and appropriate to do so.
- 1.12** It is not the purpose of this Policy to reiterate the specific provisions of the Act or the Regulations made there under or reiterate the legal complexities of the legislation, unless it is considered appropriate to do so.

## *Section 2: Summary*

*This section explains what the Policy covers*

## **2 SCOPE OF THIS POLICY**

**2.1** The Council for the County of Herefordshire is the Licensing Authority responsible for the authorising of licensable activities, the issue of personal licences, and other matters set out in the Licensing Act 2003 (“the Act”) in the County. This document sets out the principles that the Licensing Authority will apply when making decisions upon applications, notices and other authorisations relating to:

- The sale by retail of alcohol
- The supply of alcohol by or on behalf of a club to, or to the order of a member of the club
- Regulated entertainment
- The provision of late night refreshment being the supply of hot food or drink from a premises (other than a premise with a Club Premise Certificate or other lawfully exempt premises) between 11.00 pm and 05.00 am.

**2.2** Regulated entertainment requires a licence or authorisation (unless exempted by the Act) when it is performed in front of an audience and includes the following:

- Performance of a play
- Exhibition of a film
- Indoor sporting event
- Boxing or wrestling entertainment (indoors and outdoors)
- Performance of live music
- Playing of recorded music
- Performance of dance
- Provisions of facilities for dancing
- Provisions of facilities for making music

- Entertainment of a similar description to the performance of live music and/or the playing of recorded music and/or the performance of dance.
- Provision of facilities for entertainment of a similar description to dance and/or making music.

**2.3** The Act sets out four main licensing objectives which the Licensing Authority has a duty to promote in determining applications:-

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

Each of the objectives is considered to be of equal importance.

**2.4** This Policy shall apply in respect of any new consents, renewals, transfers, variations, reviews and such other notices or authorisations that may be required in relation to:-

- Premises Licence
- Club Premises Certificates
- Provisional Statements

And where appropriate:-

- Personal Licences
- Temporary Event Notices
- Such other applications, authorisations or notices (e.g. interim authorities) as are required under the Act.

**2.5** Certain areas within Hereford City have in place a Cumulative Impact Policy which is dealt with in Appendix 1.

*Section 3: Summary*

*This section states who was consulted and when the policy will be reviewed.*

### **3 POLICY CONSULTATION AND REVIEW**

**3.1** This Policy will take effect from 1<sup>st</sup> February 2011 and will be subject to periodic review and consultation. It is likely to be further reviewed in the near future due to the proposed changes in the Licensing Act.

**3.2** In developing its policy the Licensing Authority has consulted widely to ascertain an appropriate licensing framework for its area. The bodies consulted included those specified in Section 3 of the Government Guidance i.e.; -

- Responsible Authorities
- Representatives of the local licensing trade
- Representatives of local businesses and residents

**3.3** Public consultation has also taken place through Herefordshire's Parish and Town Councils and the Herefordshire Council Web site.

In addition, the authority has consulted:

- Representatives of the Safer Herefordshire Strategy Board
- Hereford and Worcester Ambulance Service
- Herefordshire Primary Care Trust

Comments were invited and all comments received via this consultation process were considered by the Licensing Authority.

**3.4** The Licensing Authority has also taken into account the guidance issued by the Department of Home Office under section 182 of the Act regarding licensing policies.



**3.5** With regard to the monitoring and review of the Policy the police, fire authority and other consultees will, if possible, be encouraged to report to the Licensing Authority annually on the operation of the licensing function and, if possible, regular meetings will held to discuss and advise on how the Licensing Objectives are being met.

#### *Section 4: Summary*

*This section explains how applications will be determined and explains that the Authority can depart from this policy when it considers it correct and appropriate.*

### **4.0 DETERMINATIONS OF APPLICATIONS**

**4.1** When determining applications, authorisations and notices that have attracted relevant representations and review applications, this Licensing Authority will normally work within the framework of this Policy and also take into account the Guidance issued by the Home Office under section 182 of the Act. However, this Licensing Authority reserves the right to depart from this Policy and the Guidance whenever it considers it correct and appropriate to do so.

**4.2** If, during the period of this Policy, new Guidance is issued by the Government such Guidance, this will be taken into account by the Licensing Authority even if it is not yet referred to in the Policy.

**4.3** When an application has not attracted relevant representations, the Licensing Authority is compelled under the provisions of the Act to automatically grant the application without regard to this Policy. The only exceptions to this are applications for:

- The review of a Premises Licence or Club Premises Certificate;
- A minor variation of a Premises Licence or Club Premises Certificate;
- An application for the mandatory alcohol condition requiring a Designated Premises Supervisor in respect of a premises licence to be dispensed with for a community premises

**4.4** All opposed applications (with the exception of certain minor variations) will be determined by the Licensing Authority's Licensing Committee or one of its Licensing Sub-Committees.

## Section 5: Summary

*This section sets out how decisions are made and who will make the decision.*

### 5 ADMINISTRATION, EXERCISE AND DELEGATION

**5.1** The Licensing Authority is involved in a wide range of licensing decisions and functions and has established a Licensing Committee to administer them. The powers under the Act also allow for delegation of powers/functions to Licensing sub-committees or to one or more officers.

#### 5.2 Licensing decisions and functions

This may be taken or carried out by the appropriate licensing committee of Herefordshire Council (except those relating to the making of a statement of licensing policy), however these functions have been delegated to the licensing sub-committee or in appropriate cases to officers of the authority. As many of the decisions will be largely administrative it is anticipated that in the interests of speed, efficiency, and cost effectiveness on many occasions they will be made by officers. The appropriate licensing committee will receive regular reports on decisions made by officers so that they maintain an overview of the general situation. The power to grant licences and permissions includes the power to renew, vary, refuse, suspend or revoke such licence or permission and the power to impose conditions. The terms of delegation of licensing functions are set out below.

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub Committee</b>	<b>Officers</b>
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		If a police objection	If no objections received
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made

Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated premise licence holder		If a police objection	All other cases
Request to be removed as designated premise licence holder			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for Interim Authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc			All cases
Decision to object when local authority is a consultee and not the lead authority		All cases	
Determination of a police representation to a temporary event notice		All cases	
Application for Minor Variation			All cases

- 5.2** Applications where there are relevant representations will be dealt with by the Licensing Committee/Sub-committee, unless:
- (a) such representations are from interested parties and are considered to be irrelevant, frivolous or vexatious, or
  - (b) the Licensing Authority, the applicant and everyone who has made relevant representations agrees that a hearing is not necessary, or
  - (c) the representations are in relation to a minor variation and the power to determine the application has been delegated to the officers of the Licensing Authority

With regard to point (b) above, the Licensing Authority reserves the right to disagree that a hearing is not necessary.

- 5.3** If a Licensing Committee/Sub-Committee hearing is required under the Act in respect of an application, the hearing will be in public unless there are compelling reasons for it to be heard otherwise. When a hearing is held in public, the Licensing Committee/Sub-Committee can retire into private session to consider their decision. Opposed applications for personal licences will normally be held in a private session.

## *Section 6: Summary*

*This section sets out who the responsible authorities are and what is an interested party when making representation. It also gives guidance in respect of making a relevant representation.*

## **6. RESPONSIBLE AUTHORITIES, INTERESTED PARTIES AND REPRESENTATIONS**

**6.1** The Act sets out the responsible authorities that can make representations about licence applications, or who can apply for a review of an existing licence. In Herefordshire these are:

- West Mercia Police
- Hereford and Worcester Fire and Rescue
- Herefordshire Council Environmental Health (Commercial)
- Herefordshire Council Environmental Health (Pollution)
- Herefordshire Council Trading Standards
- Herefordshire Council Safeguarding and Vulnerable Team
- Herefordshire Council Planning Department
- Health and Safety Executive
- And any other body or person that may be prescribed by regulations at a later date.

A current list of responsible authorities and their addresses can be obtained from the Council's Licensing Team.

**6.2** Representations can be made by an 'interested party' about certain applications made to the Licensing Authority. An interested party means any of the following:

- (a) a person living in the vicinity of the premises,
- (b) a body representing persons who live in that vicinity,
- (c) a person involved in a business in that vicinity,
- (d) a body representing persons involved in such businesses
- (e) an elected member of the Licensing Authority

In determining whether a person is an interested party, the Licensing Authority shall take into account the following principles:

- Each case will be decided upon its merits.
- This Licensing Authority will not apply a rigid rule to its decision making,
- This Licensing Authority will give the widest possible interpretation to the term 'business'
- This Licensing Authority will take into account any guidance provided by the Home Office under section 182 of the Act on the matter.

Interested parties may also apply for a review of a Premises Licence or a Club Premises Certificate.

**6.3** Interested parties and the responsible authorities can make representations about:

- Applications for a new Premises Licence
- Applications for the variation of an existing Premises Licence
- Applications for a new Club Premises Certificate
- Applications for the variations of an existing Club Premises Certificate
- Applications for a Provisional Statement
- Review applications

**6.4** All representations must be 'relevant', for example they must be about the likely effect of the grant of an application on the promotion of one or more of the licensing objectives of:

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

In the case of interested parties, the Licensing Authority may reject representations that it considers to be irrelevant, frivolous, vexatious or repetitious.

**6.5** It is important for interested parties and responsible authorities to note that they can make representations on any of the 4 licensing objectives (for example the Fire Brigade could make representations about crime at a premises or Trading Standards on the basis of public nuisance).

**6.6 Relevant Representation**

A relevant representation has been defined in a number of stated cases which have appeared before the High Court and which are binding on the Licensing Authority. Of particular note is the case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court and The Sauehall Massie Conservation Society and Wirral Metropolitan Borough Council [2008] EWHC 838 (Admin)*. In brief it was said that a licensing authority should look for some real evidence to support the representation made. Fears and speculation as to what might happen will not be enough. Whilst this case remains relevant, Herefordshire Council will expect a representee to give evidence of some description to substantiate a conclusion that the variation will infringe the licensing objectives.

**6.7** Furthermore the case *R (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court [2009] EWHC 1996 (Admin)* established the fact that a representation made in relation to public nuisance must be more than a private nuisance and that a single interested party is incapable in law of constituting "the public" for the purposes of satisfying the test of "public nuisance" pertinent to the licensing objective.

**6.8** Therefore the Licensing Authority will deem that any representation which is not supported by any evidence of some description is not a relevant representation. Acceptable evidence will normally relate to real and reliably witnessed events at the premises. However evidence may also be considered when arising from very similar events which having taken place at another location and were run by the same applicant / promoters. An aggrieved representee whose evidence has not been accepted by the



Licensing Service can informally appeal to his or her councillor for assistance when a representation has not been accepted.

**6.9** Furthermore, where only one public representation is received in respect of the public nuisance licensing objective, then this too will be deemed not to be relevant on the grounds that it is a private nuisance. However, in such a circumstance the licensing service will refer a single complainant to the environmental health service for investigation as a potential statutory nuisance.

**6.10** Applications for the review of an existing Premises Licence or Club Premises Certificate can be made by interested parties and responsible authorities but the reason for the calling of the review must address one or more of the four licensing objectives.

**6.11** Only the Police can make representations about applications for:

- Transfers of premises licences,
- Variations to change the Designated Premises Supervisors at a premises,
- Applications for personal licences,
- Interim authority notices, and
- Temporary Event Notices.

In above cases, the representations from the Police have to be restricted to the licensing objective of the prevention of crime and disorder.

**6.12** All representations must be received by the Licensing Authority within the statutory deadlines set out in either the Act or the Regulations made under the Act. The Licensing Authority cannot legally accept any late representations. In the cases of applications for new Premises Licences/Club Premises Certificate and variations, the deadline for receipt of any representation and the address that they must be sent to will be shown on a notice(s) displayed at the premises and in a notice placed in a local newspaper by the applicant.

**6.13** When considering applications for new, or variations (under sections 34 and 84 of the Act) to existing Premises Licences /Club Premises Certificates the responsible authorities and interested parties should consider the adequacy of any measures intended by the applicant to deal with any potential for public nuisance, crime and disorder, public safety, and the protection of children from harm. Any such proposed measures should be included in the application form submitted to the Licensing Authority by the applicant. If any responsible authority or interested party is not satisfied with any of the proposed measures they may make representations against the application to the Licensing Authority.

**6.14** Applications for ‘minor’ variations under section 41A or section 86A of the Act do not have to include details of the steps that the applicant intends to take to promote the licensing objectives. Nor can the Licensing Authority convert any intended steps that may be included in the application into additional licence conditions. It is recommended that:

- Applicants take this into account when applying for a ‘minor’ variation in relation to the receipt of any representations against the applications, and
- The responsible authorities and interested parties also take this into account when considering whether the application will have any effect on the licensing objectives.

NB: It is important for applicants, responsible authorities and interested parties to note that the Licensing Authority may only grant this type of application in its entirety or they must completely refuse it. Any agreements (e.g. concerning additional conditions) made between the applicant and those making representations are of no effect under the Act and can not be taken into account when the Licensing Authority makes its determination on the application.

**6.15** The Licensing Authority will not remove any personal details from representation made by members of the public, unless either requested in

writing to do so, or if the Licensing Authority feel that by disclosing the persons details, natural justice may be affected.

## *Section 7: Summary*

*This section explains the application process and the procedures which should be followed to make a successful application.*

### **7 APPLICATION CONSULTATION**

**7.1** The aim of consultation is to provide the opportunity for interested parties to be involved in the licensing process. The consultation procedure required for each type of application is prescribed within the Act and Regulations made there under.

**7.2** The Act itself is sometimes confusing and misleading. To overcome problems associated with different types of applications the Licensing Authority has put in place various processes.

**7.3** An application for a new/variation to a premises licence or a new/variation to a club premises certificate requires the applicant to advertise both on the premises (at the start of the consultation period) and in a local newspaper in circulation in the area within 10 working days.

**7.4** The authority would accept a publication which is circulated in the immediate vicinity of the premises or in the Hereford Times or the Journal.

**7.5** The consultation period commences on the day after a **completed** application was given to the Licensing Authority. (Completed means that no information is missing from the application or the plan and the correct fee and required documents have been received).

**7.6** The term used within the act is 'was given' to the Licensing Authority. An application is only given to the Licensing Authority when it is received by them. Sometimes application will be delayed by post and where this occurs the terms under the Interpretation Act 1978 will be applied which states that a letter sent by first class mail is deemed to be delivered on the

- second working day after posting. (For example: Where an application is posted today [Tuesday] then it is deemed delivered not tomorrow but on Thursday. For this reason the Licensing Authority will keep all envelopes used to post applications).
- 7.7** The Licensing Authority will also write to the applicant notifying them of the date that the 28 day period will start and the date for which it must appear in an advertisement.
- 7.8** To avoid additional cost, applicants are advised not to advertise in a local newspaper until such time as they have been informed by the Licensing Authority that the application has been accepted.
- 7.9** Where an application is submitted and found to be defective, the Licensing Authority will always try and contact the applicant by phone to advise of the deficiency and the required action. However, it may not always be possible to speak to the applicant. On all occasions the Licensing Authority will return the application together with a letter explaining what action is required to make the application complete.
- 7.10** Only once an application is complete can the consultation period commence.
- 7.11** There is no discretion over the application process under the Act and applicants should therefore consult the regulations which cover the application process [The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005].
- 7.12** An event organiser can give notification to the Licensing Authority and the Police of a temporary event by way of a temporary event notice (TEN) where the event will involve less than 500 people, but this application must be made no later than 10 working days before the event. This period does not include the day the application is received nor the day on which the

event is to start; there is no discretion available to shorten this notice period.

- 7.13** Only the Police may intervene to prevent the event taking place or agree a modification of the arrangements for such an event. Notice may be given in advance of the minimum requirement and this is encouraged. The police have a preferred contact point for the submission of TENs which is The Licensing Unit, West Mercia Constabulary, Bath Street, Hereford, HR1 2HT, Tel: 0300 333 3000 (ask for the Licensing Officer).
  
- 7.14** Applicants who intend to hold large one-off events should consider making application for a premises licence at least 3 months prior to the event, to allow sufficient time.
  
- 7.15** The Licensing Authority will make copies of applications available for inspection by the public.

## *Section 8: Summary*

*This section explains that new applications should contain sufficient details and gives guidance in respect of matters which should be considered when making an application. It also covers applications made in relation to variations to premises licences, change of DPS, Wholesale of Alcohol, Internet and mail order sales, Regulated Entertainment, Late Night Refreshment, Bingo Clubs, Petrol Stations, Vehicles and Moveable Structures, Vessels and Ships, Sports Grounds and Hotel Mini Bars*

## **8 PREMISES LICENCES**

### **8.1 New Applications**

The application form should include sufficient information to enable the Licensing Authority, any interested party and any responsible authority to assess the steps intended by the applicant to promote the Licensing Objectives. A description of business to be conducted on the premises must also be included in the application form.

**8.2** Where alcohol is to be sold for consumption in premises it would be valuable to know the extent of seating and the type of activities available on the premises whether licensable under the Act or not.

**8.3** Full details of information required in the application form include:-

- Relevant licensable activities to be conducted on the premises
- Times/days of the week including holiday periods or different times of the year, that the activities are to take place.
- Any other times when the premises is open to the public
- Where the licence is required for a limited period, that period
- If the activities include the supply of alcohol, the name and address of the designated premises supervisor
- If alcohol is to be supplied, if it is to be consumed on/off the premises or both

- If adult entertainment or services of any description (whether licensable or not) are to be provided at the premises, full details must be given
- The steps the applicant proposes to promote the Licensing Objectives.
- The applicant will be expected to undertake a thorough risk assessment with regard to each of the licensing objectives when preparing their applications and specify the steps that they will take to promote the licensing objectives.

**8.4** Applicants are recommended to acquaint themselves with:

- The contents of this Policy dealing with the four licensing objectives
- The Guidance issued by the Guidance issued by the Home Office under section 182 of the Act and the other guidance available on Government websites.

**8.5** The Licensing Authority will expect Operating Schedules to satisfactorily address the issues of the licensing objectives, from the design of the premises through to the daily operation of the business.

**8.6** Particular consideration will be given to the following:

- Safety arrangements e.g. premises must be constructed or adapted in such a way that they are safe and appropriate, have a safe capacity assessment etc.
- The steps that will be taken to prevent the under age sale of alcohol
- The steps the applicant has taken or proposes to take to prevent public nuisance. Such steps may include the management of customers' behaviour, installation of sound proofing, air conditioning, acoustic lobbies, sound limitation devices, parking provision, notices at exits and in the car park.
- What measures will be taken to prevent disorder and nuisance and to also secure public safety e.g. the use of CCTV, the employment of registered door supervisors, means of access/exit, types of drinking utensils used such as glass, plastic, no bottles etc.



- The measures proposed to prevent the consumption or supply of illegal drugs, possession of offensive weapons including any search procedures and entry policies.
- The likelihood of any public disorder, violence or other alcohol related crime arising if a licence were to be granted.

### **8.7 Variations to existing Premises Licences**

The holder of an existing Premises licence may apply for a variation of the licence (e.g. to change the licensed hours or activities) under either section 34 of the Act ('full variations') or in the case of 'minor' variations under section 41A of the Act. For a 'full' variation the applicant is expected to complete the application form with the steps they intend to take to promote the licensing objectives.

### **8.8 Designated Premises Supervisor**

Where a premises sells alcohol, a Personal Licence holder will be identified in the Premises Licence as the Designated Premises Supervisor for the premises. This is to ensure that there is always one specified individual who can be readily identified for the day to day running of the premises.

**8.9** Where the Designated Premises Supervisor is not available for a significant period of time (e.g. on holiday) they should nominate in writing somebody who is authorised to act on behalf Designated Premises Supervisor, as a point of contact

**8.10** Community premises can apply to have the requirement for a Designated Premises Supervisor removed from their premises licence.

### **8.11 Wholesale of Alcohol**

The wholesale of alcohol to the public is a licensable activity under the 2003 Act and a Premises Licence and a Designated Premises Supervisor will be needed where such transactions take place.

### **8.12 Internet and mail order sales**

A Premises Licence will be required for the warehouse/storage facility of the alcohol, when the alcohol is delivered/dispatched from that place to the public. However, the call centre where the order was placed would not be licensable. The Operating Schedule must include procedures for ensuring that sales of alcohol are not made to persons under the statutory age limit (currently 18 years of age).

### **8.13 Regulated Entertainment**

Regulated entertainment will require (subject to certain exemptions) a Premises Licence, a Club Premises certificate or a Temporary Event Notice. The forms of regulated entertainment are: -

Performance of a play

Exhibition of a film

Indoor sporting event

Boxing or wrestling entertainment (indoors and outdoors)

Performance of live music

Playing of recorded music

Performance of dance

Provisions of facilities for dancing

Provisions of facilities for making music

Entertainment of a similar description to the performance of live music and/or the playing of recorded music and/or the performance of dance.

Provision of facilities for entertainment of a similar description to dance and/or the making music.

### **8.14 Late Night Refreshment**

The provision of hot food and/or hot drink for consumption either on or off the premises is licensable under the 2003 Act from the hours of 11.00 pm and until 5.00 am.

Some premises are exempt from this licensing requirement:

- clubs, serving hot food and hot drink only to their members

- hotels, or comparable premises, serving hot food and hot drink only to those who will be staying at the hotel that night
- premises serving hot food and hot drink only to their own employees
- premises serving hot food and hot drink only to guests of those falling in the categories outlined above.

### **8.15 Bingo Clubs**

Where activities which are licensable under the Act are carried out in Bingo Clubs the conditions imposed will apply alongside those conditions imposed under the Gambling Act 2005.

### **8.16 Petrol Stations**

There are restrictions of the sale of alcohol from petrol stations, however, where it is shown that the main activity of the premises is not that of a garage. Each case will be judged on the individual circumstances of the application.

### **8.17 Vehicles and Moveable Structures**

The sale of alcohol or the carrying out of other licensable activities from vehicles/moveable structures may only be carried out from a premises or site which holds a Premises Licence. It should also be noted that the provision of any entertainment or entertainment facilities on premises consisting of or forming part of any vehicle whilst it is in motion and not permanently or temporarily parked is not to be regarded as a regulated entertainment for the purposes of the 2003 Act. For example, a band performing on a moving float in a parade would not require a premises licence if performances only take place while the vehicle is in motion.

### **8.18 Vessels and Ships**

Vessels or ships are licensable by the Licensing Authority where they are usually moored.

### **8.19 Sports Grounds**

On premises that are subject to Safety at Sports Ground Act 1975 requirements, the Safety Certificate issued for the premises will normally take precedence over the licence conditions relating to safety whilst the premises is in use under the Safety Certificate.

### **8.20 Hotel Mini Bars**

Hotels that have mini bars in their rooms will have to ensure and demonstrate that they have put adequate measures in place to ensure that alcohol can not be obtained by under age persons.

*Section 9: Summary*

*This section deals with the application for Club Premises Certificates and the rules in relation to Clubs.*

**9 CLUB PREMISES CERTIFICATES**

- 9.1** A 'Qualifying Club' may apply for a Premises Certificate. The Licensing Act 2003 stipulates the requirements of a 'Qualifying Club' as specified in Sections 61-64 of the Act. The club/organisation members must have joined together for a particular social, sporting or political purpose and then have combined to purchase alcohol in bulk as members of the organisation for supply to members and their guests. The Licensing Authority must be satisfied these conditions have been met, including evidence to support that any gain from its activities is applied for the benefit of the club and its members and that there is a minimum of 48 hours delay between application and the acceptance of new members. The Club must have a minimum of 25 members.
- 9.2.** In order for Qualifying Clubs to supply alcohol and provide other licensable activities on Club premises, a Club Premises Certificate is required, and there is no requirement to specify a Designated Premises Supervisor as there are technically no retail sales of alcohol.
- 9.3** The Licensing Authority will require the Club Secretary's current contact details to be readily available.
- 9.4** The procedures, guidance and this Licensing Authority's Policy in relation to Club Premise Certificates are identical to that for Premises Licences.

*Section 10: Summary*

*This section deals with the application for a Provisional Statement.*

**10. PROVISIONAL STATEMENTS**

- 10.1** Applicants may need to apply for a Provisional Statement where premises are being constructed, extended or substantially changed structurally for the purpose of licensable activities.
- 10.2** This Licensing Authority's Policy in relation to Provisional Statements are identical to those for Premises Licences. Before premises with a Provisional Statement may be used for licensable activities an application must be made and granted for a Premises Licence or Club Premises Certificate.
- 10.3** If representations are received in respect of an application for a Provisional Statement, conditions may be imposed on the provisional Statement in the same manner as if it were a Premises Licence or the application may be refused by the Licensing Authority.

*Section 11: Summary*

*This section explains about the mandatory conditions and the power to attach further conditions.*

**11 CONDITIONS ON PREMISES LICENCES AND CLUB PREMISES CERTIFICATES**

**11.1** The Act sets out mandatory conditions that are applicable to Premises Licences and Club Premises Certificates according to the activities that they are authorised for.

**11.2** The Licensing Authority may impose additional conditions as a result of representations against a licence. Each case will be on its own merits, and any additional conditions will be appropriate to the nature of the activities and hours applied for and shall reflect the four licensing objectives. Conditions will generally be considered unnecessary if they are already adequately covered by other legislation. When no representations have been received against an application, the Licensing Authority reserves the right to convert the steps that an applicant has put into their application into licence conditions whenever such conditions are appropriate to the licensing objectives.

**11.3** The additional conditions that may be attached to licences and certificates upon consideration of relevant representations will be tailored to the individual circumstances and characteristics of the premises and events concerned to meet the licensing objectives. For example, conditions may be imposed to prevent unnecessary noise and disturbance to local residents by way of limited hours and/or restrictions on sound levels.

**11.4** Apart from being able to impose additional conditions, the Licensing Authority has the power to refuse applications in their entirety.

*Section 12: Summary*

*This section explains that, other than in exceptional circumstances, the Licensing Authority will expect films to have a British Board of Film Classification.*

**12 FILM CLASSIFICATION**

**12.1** The admission of children to any film exhibition shall be restricted in accordance with the classification given to that film by the British Board of Film Classification (or in exceptional circumstances this Licensing Authority). No person under the age of 18 shall be admitted to any film that has not been classified by the British Board of Film Classification (or in exceptional circumstances this Licensing Authority).

**12.2** This Licensing Authority agrees with the recommendation of the Secretary of State that Licensing Authorities should not duplicate the role of the British Board of Film Classification by choosing to classify films themselves. The classifications recommended by the British Board of Film Classification for any film will be applied by this Licensing Authority unless there are exceptional reasons for this Licensing Authority to adopt the role of film classifier and classify or re-classify any particular film. The decision as to whether to classify or re-classify any particular film will be at the absolute discretion of this Licensing Authority.

**12.3** If the Licensing Authority is concerned about the classification given by the British Board of Film Classification to a particular film, it may give notice to the holders of premises licences that the film may not be exhibited until it has been viewed and classified by the Licensing Authority. In such circumstances the Licensing Authority will view and classify the film as a matter of urgency.

**12.4** Licence conditions may specify that immediately before each exhibition at the premises of a film (other than a current newsreel) passed by the British Board of Film Classification, there shall be exhibited on screen for



at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of a certificate of the Board, or, as regards a trailer advertising a film, of the statement approved by the Board indicating the category of the film. Conditions may also require notices to be displayed both inside and outside the premises so that persons entering can readily read them and be aware of a category attached to any film or trailer.

- 12.5** Where any video works are shown on premises with a licence (e.g. in pubs) they should be suitable for the age group of the children present, having regard to the official age classification of the work given by the British Board of Film Classification.

### *Section 13: Summary*

*This section sets out how applicants are advised to apply for the hours which they will use and how they must have consideration to the impact they may have on the Licensing Objectives. Where appropriate following representation, the Licensing Authority may curtail the hours applied for.*

## **13 HOURS OF LICENSED ACTIVITIES**

- 13.1** Applicants are advised, prior to making an application, to carefully consider the licensed hours that they require and the impact these hours may have on any of the licensing objectives. They should include details in the application form of the steps that they propose to take to ensure the proposed licensed hours do not cause problems in relation to the licensing objectives.
- 13.2** In making decisions that relate to the hours for which a premises is licensed or any conditions as to delivery times, the Licensing authority will give consideration to how the applicant will achieve the Licensing Objectives and the representations made against such hours.
- 13.3** Each case will be decided on its own merits based on whether the licensing objectives can be met. Stricter conditions, including limiting licensed hours, are likely to apply to premises when the applicant is unable to demonstrate that the hours required would not be detrimental to the licensing objectives.
- 13.4** Limitations on operating hours may be imposed as appropriate upon consideration of representations for example, in the case of premises known to be a focus of disorder, nuisance, disturbance or people engaging in anti-social behaviour.
- 13.5** One of the aims of the Licensing Act 2003 was that varied licensing hours would minimise concentrations of customers leaving licensed premises simultaneously and thus help reduce the potential for disorder. However

this Licensing Authority recognises that in relation to any of the licensing objectives that an individual premises could, in relation to any of the licensing objectives, cause as many if not more problems, than a concentration of premises in an area.

- 13.6** In relation to shops and other retail outlets supplying alcohol for consumption off the premises, whilst the general policy will be to allow sales of alcohol at all times that the premises is open for business, this Licensing Authority recognises that any particular application may have to be refused or hours may have to be restricted in order for the licensing objectives to be achieved.
  
- 13.7** Each case will be decided on its own merits based on whether the licensing objectives can be met. Stricter conditions including limiting licensed hours are likely to apply where the premises are situated in mainly residential areas to minimise disturbance to local residents.

## *Section 14: Summary*

*This section deals with the hours licensed applicants are advised to apply for and consideration to the impact these may have on the Licensing Objectives. The Licensing Authority may curtail the hours applied for.*

### **14 OPENING HOURS**

**14.1** It is a requirement that applicants put down on their application form for new premises licences/Club Premise certificates the times that the premises are to be open on any day. Subject to there being no representations, the opening times requested will be placed on the Licence/Certificate.

**14.2** It is possible for applicants to apply for longer opening times than those required for the licensable activities (e.g. supply of alcohol).

**14.3** In the event of relevant representations, the Licensing Authority may consider taking steps in restricting the opening times, such as:

- Reducing the opening times (and especially the closing times) to the same times as the licensable activities, or
- Reducing the closing time to a shorter period after the finishing times of the licensable activities (e.g. reduce the closing time to 30 minutes after the time that the supply of alcohol has to stop).

**14.4** Such measures may be considered necessary, for example to prevent persons stacking up bottles, cans etc for drinking on the premises during the remainder of the premise's opening times and creating crime and disorder or public nuisance issues.

## *Section 15: Summary*

*This section deals with the application process in respect of personal licences and states that, other than in exceptional circumstances, the Licensing Authority will uphold any representation made by the police.*

### **15 PERSONAL LICENCES**

**15.1** Personal licences allow a person to sell alcohol and authorise another person to sell alcohol on their behalf. The place where the sale takes place must have a premises licence and a Designated Premises Supervisor.

**15.2** The Licensing Authority has to automatically grant a personal licence whenever the application meets the statutory requirements. The only exemption to this is when an applicant has an unspent relevant conviction for any relevant offence, or foreign offence as defined in Schedule 4 the Act.

**15.3** In order to substantiate whether or not an applicant has a conviction for an unspent relevant Offence or foreign offence, applicants will be required to produce a current Criminal Record Bureau. A declaration is also required stating that an applicant has no relevant convictions for any relevant offences stipulated in schedule 4 of the Act.

**15.4** The Licensing Authority will liaise closely with the Police when an applicant is found to have an unspent conviction for a relevant offence as defined in the Act. Where an applicant for a personal licence has an unspent criminal conviction for a relevant offence, the police may object to the grant of the licence.

**15.5** If an objection to an application is made by the Police, the matter will be referred to the Licensing Committee for a decision. The refusal of the application will be the normal course of action, unless there are, in the

opinion of the Licensing Authority, exceptional and compelling circumstances that justify granting the application.

*Section 16: Summary*

*This section deals with Temporary Event Notices and their application process.*

## **16 TEMPORARY EVENT NOTICES**

**16.1** A Temporary Event Notice (TEN) must be submitted to the Licensing Authority when a person wishes to provide licensable activities at an event and;

- the premises does not have the benefit of a Premises Licence or Club Premises Certificate, or
- the premises does not have an appropriate Premises Licence or Club Premises Certificate for the event, or
- they do not wish to use any existing Premises Licence or Club Premises Certificate for the event

**16.2** There are limitations and strict procedures for TENs, these are: -

- a. The Notice must be received by the Licensing Authority and police at least clear 10 working days before the first day of the event. This period excludes the working day on which the notice is received by the Licensing Authority and Police and the day of the event. Applicants should note that it is unlawful for the Licensing Authority to accept a Temporary Event Notice outside of this time.
- b. The number of people attending the event cannot exceed 499 at any one time.
- c. The duration of the event must not exceed 96 hours.
- d. The same premises can only be used for up to 12 occasions per calendar year and the aggregate number of days must not exceed 15.
- e. A Personal Licence holder may only submit a maximum of 50 Temporary Event Notices per year.
- f. A person who does not hold a Personal Licence is limited to 5 Temporary Event Notices per year.

**16.3** Only the Police may object to a TEN and then only on the grounds of the licensing objective of the prevention of crime. If an objection is made, the

Licensing Committee will decide whether or not a Counter Notice be issued to cancel the TEN after hearing the representations and evidence of both the Police and the giver of the TEN.

- 16.4** The police have a period of 48 working hours to issue an objection notice if they consider the crime prevention objective will be undermined.



*Section 17: Summary*

*This section advises of the right to appeal decisions.*

**17 APPEALS**

The Act sets out the rights of the different parties to an application to appeal to the Magistrates Court against certain decisions of the Licensing Authority. Such parties will be formally advised of their rights of appeal after the Licensing Authority reaches its decision.

### *Section 18: Summary*

*This section explains who can call for a review of a premises licence and that The Licensing Authority will have expected the premises licence holder to have been consulted prior to the review being called. This section also deals with the action that the authority will take in respect of test purchases.*

## **18 REVIEWS AND COMPLAINTS ABOUT LICENSED PREMISES.**

**18.1** Reviews represent a key protection for the community. Where the licensing authority considers action necessary under its statutory powers it will take necessary steps to support the licensing objectives.

**18.2** If a premises has an existing licence, a responsible authority or an interested party may apply to the Licensing Authority for a review of a Premises Licence or Club Premises Certificate. Once a review application has been lodged with the licensing Authority any other responsible authority or interested party may make representations (within the legal deadline) to the Licensing Authority in relation to the premises. The licence holder of the premises may make representations against the review application. Review applications and subsequent representations can only be made on the grounds of one or more of the licensing objectives.

**18.2** Review applications will be heard by the Licensing Authority's Licensing Committee or Licensing Sub-Committee, who will determine the outcome of the Licence/Certificate after hearing and considering the application and the representations for and against it. Each case will be decided on its own merits, and the Licensing Authority may take several courses of action (e.g. take no action, revoke the licence, reduce the licensed hours etc) in accordance with the Act.

### **18.3 Failed Test Purchases**

Where a premises fails a test purchase then, other than in exceptional circumstances, the premises licence will be reviewed. During the course of any review the Licensing Authority will look at the cause of the failure. Where during the first review it is found that the training of staff at the premises is inadequate, the Licensing Authority may look at placing a condition on the licence in respect of staff training and will consider suspending the licence to allow sufficient time to enable staff to be trained. When a further test purchase is failed the Licensing Authority will consider revoking the licence in order to promote the licensing objective of the 'protection of children from harm'.

**18.4** Other than in exceptional circumstances, in partnership with the Police and Trading Standards, persons who sell to under-age persons will normally be dealt with by means of a Fixed Penalty Notice unless that person is the holder of a personal licence.

**18.5** Where that person holds a personal licence the Licensing Authority will normally look towards prosecuting that person through the Court for the offence. The court will be asked to consider either the suspension or revocation of the personal licence.

### **18.6 Premises Persistently Selling**

In line with the existing legislation, the Licensing Authority or the Police will look at prosecuting those premises which persistently sell to under age persons. Persistently selling is defined by the legislation as 2 sales within a 3 month period.

### **18.7 Crime and Disorder**

In most cases reviews under the crime and disorder objective will be launched by the police. In such cases the Licensing Authority will expect the police to have engaged with the premises licence holder and/or DPS to try and resolves issues at the premises. Where all best efforts have

failed to address the issues then it is right and proper that the matter should be referred to the Licensing Authority to resolve. In most cases, but not exclusively, the Licensing Authority will look at attaching conditions in relation to the use of SIA door staff and/or restricting the hours of operation.

### **18.8 Reviews launched by members of the public**

The Licensing Authority will expect members of the public to bring to the attention of the responsible authorities issues concerning licensed premises at an early stage, to afford those responsible authorities the opportunity to work in partnership with the premises, the interested party and themselves to address the problems at the premises prior to a review being launched.

**18.9** Interested parties will be expected to produce some form of evidence supporting their reason for calling the review. This evidence should show the time and date of the incidents which occurred together with the outcome.

**18.10** It must be stressed that the licensing authority may reject applications from interested parties for a review or representations, if the Licensing Authority considers them to be frivolous, vexatious or repetitious. In the case of being repetitious this means that, in the opinion of the Licensing Authority, a reasonable period of time has not lapsed since an earlier representation or review application.

**18.11** Residents and other interested parties may also make a complaint against premises regardless of whether they have previously made representations or called for a review of an existing licence. The complaints may in the first instance be made to the Licensing Team who will forward it to the relevant responsible authority (e.g. In the case of crime the complaint will be forwarded to the police).

*Section 19: Summary*

*This section draws attention to the fact that an enforcement policy does exist as well as what it includes.*

**19 ENFORCEMENT POLICY**

**19.1** The council has an enforcement policy based around the principles of consistency, transparency and proportionality set out in the Department of Trade and Industry's Enforcement Concordat and which also takes into account the Attorney-General's Guidelines to Crown Prosecutors for bringing prosecutions. The enforcement policy allows a proportionate response to be made where offences against licensing legislation are found or where licence conditions have been contravened.

**19.2** It is essential that licensed premises operate in accordance with the Act and especially within their licensed hours and licence conditions. Part of the council's role is to monitor premises and take appropriate action. This may be independently or alongside the police and/or other Responsible Authorities to ensure the licensing objectives are promoted. Protocols have been established with the police on enforcement issues to provide an efficient and effective deployment of local authority and police staff. Joint visits are commonly undertaken to enforce licensing law and to inspect licensed premises.

**19.3** To protect young people, the council routinely undertake test purchasing to ensure the law is being adhered to. It should be noted the Licensing Authority supports the use of the Challenge 25 Policy and recommends this should be included as part of an applicant's operating schedule in any Premises Licence or Club Premises Certificate application. Please contact Trading Standards for further details.

## *Section 20: Summary*

*These pages address the issue of promoting the licensing objective of the prevention of crime and disorder. It advises that applicants should consider the advice given in these pages when making application and should also take it into account. Where appropriate, the applicant should make reference to these issues within their application. Where it is felt appropriate, the Licensing Authority may address some or all of these issues in the decision making process.*

## **20 PREVENTION OF CRIME AND DISORDER**

### **20.1 General**

When applicants for premises licences or club premises certificates are preparing their application forms or when responsible authorities or interested parties are considering such applications the following matters may be considered as control measures towards the promotion of the prevention of crime and disorder. The licensing authorities when considering applications following the receipt of any relevant representations may also take such matters into account in reaching its decision on the application.

**20.2** Whether these options may be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved.

**20.3** Necessary conditions for the licence or certificate will also depend on local knowledge of the premises the following measures should not be regarded as standard conditions to be automatically imposed in all cases. They are designed to provide a range of possible conditions drawn from experience relating to differing situations and to offer guidance.

**20.4** Any individual preparing an operating schedule is at liberty to volunteer any measure, such as those described below, as a step he or she intends to take to promote the licensing objectives. When incorporated into the licence or certificate as a condition, they become enforceable under the law and a breach of such a condition could give rise to prosecution or a review of the licence.

### **20.5 Training**

The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime.

**20.6** The authority recommends that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs, violence in licensed premises and deals with conflict resolution.

**20.7** Suitable training should be extended to all bar staff and door staff so that drug dealers and troublemakers will be deterred from using licensed premises.

**20.8** Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection.

### **20.9 Designated premises supervisor (DPS)**

It is expected that the Designated Premises Supervisor will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises.

### **20.10 Risk Assessment for the Police**

The Police may, on the grounds of the prevention of crime and disorder, make representations against certain applications for the provision of music requesting that licence conditions be imposed requiring:

- the licence holder to complete and submit to the Police when appropriate a 'Event Risk Assessment Form' 14 days prior to the event. This form will allow the licence holders, the managers of premises, promoters of music events, event security and the Police to work in partnership to identify and minimise any risk of serious violent crime happening at a proposed event, and
- for a debrief form to be submitted to them 3 days after the event has taken place.

**20.11** This Licensing Authority will consider the recommendations of the Police and any representations from the applicant concerning the nature of the premises, the music entertainment and its clientele in deciding whether such conditions should be imposed.

### **20.12 Behaviour of Customers Outside Licensed Premises**

One of the main sources of complaint regarding licensed premises relates to the activities and behaviour of customers outside the boundaries of licensed premises. Licensees must take reasonable steps to prevent such behaviour having a negative impact on the vicinity of the premises. In addition licensees should consider identifying and refusing to admit problem customers.

**20.13** Particular regard should be given to premises where customers congregate outside to smoke or congregate in periods of fine weather. Regard should also be given where customers do not disperse quickly when leaving the premises, particularly late at night in residential areas.

### **20.14 Door Supervisors**

Conditions relating to the provision of door supervisors and security teams may be valuable in:

- preventing the admission and ensuring the departure from the premises of the drunk and disorderly, without causing further disorder;



- keeping out excluded individuals (subject to court bans or imposed by the licence holder);
- searching and excluding those suspected of carrying illegal drugs, or carrying offensive weapons; maintaining orderly queuing outside of venues prone to such queuing,
- ensuring public safety

**20.15** Conditions may also be needed to deal with the number of such supervisors, where and at what times they should be on duty on the premises, and whether at least one female supervisor should be available (for example, if female customers are to be the subject of body searches).

**20.16** Licensees may also be required to keep a record of all door supervisors/security personnel employed at the premises. These records should include the name, address, date of birth and SIA registration number, dates/times person was on duty, and shall be available for inspection.

**20.17** Any persons employed at licensed premises to carry out any security activity must (unless exempted by law) be licensed with the Security Industry Authority.

#### **20.18 Incident Report Book**

Where necessary the Licensing Authority will require an incident report book to be kept at the premises. This should include any decision to refuse access, any attempt to make an underage purchase, any incident of crime and disorder in or about the premises, incidents of fire and fire alarm activations etc. This book shall be available for inspection by an authorised officer of the Council or a Police Officer.

## **20.19 Radio Pagers**

Herefordshire is currently operating a radio communication system in parts of the County which allows easy and instant contact to be made between licensees and Herefordshire's Emergency Control Centre.

**20.20** The Control Centre has a direct link with the West Mercia Police. This system will connect premises licence holders, designated premises supervisors, managers of premises and clubs to the local police and can provide for rapid response by the police or the Local Authority to situations of disorder which may be endangering the customers and staff on the premises.

**20.21** Such communication systems provide two-way communication, both enabling licence holders, managers, designated premises supervisors and clubs to report incidents to the police, and enabling the police to warn those operating a large number of other premises of potential trouble-makers or individuals suspected of criminal behaviour who are about in a particular area. Pager systems can also be used by licence holders, door supervisors, managers, designated premises supervisors and clubs to warn each other of the presence in an area of such people.

**20.22** The Secretary of State recommends that text or radio pagers should be considered appropriate necessary conditions for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. Following individual consideration of the particular circumstances of the venue, such conditions may also be appropriate and necessary in other areas for the prevention of crime and disorder.

**20.23** It is recommended that a condition requiring the communication links where available should include the following elements:

- a requirement that the text/pager equipment is kept in working order at all times;

- a requirement that the pager link be activated, made available to and monitored by the designated premises supervisor or a responsible member of staff at all times that the premises are open to the public;
- a requirement that any police/local authority instructions/directions are complied with whenever given; and
- a requirement that all instances of crime and disorder are reported via the communication link by the designated premises supervisor or a responsible member of staff to an agreed contact point.

For further information contact the Hereford City Partnership.

#### **20.24 The use of glass in licensed premises**

Glass bottles may be used as weapons inflicting more serious harm during incidents of disorder. A condition can prevent sales of drinks in glass bottles for consumption on the premises.

**20.25** It is recommended that a condition requiring that no sales of beverages in glass bottles for consumption at particular premises should be expressed in clear terms and include the following elements:

- no bottles containing beverages of any kind, whether open or sealed, shall be given to customers on the premises whether at the bar or by staff service away from the bar;
- no customers carrying open or sealed bottles shall be admitted to the premises at any time that the premises are open to the public

**20.26** In appropriate circumstances, the condition could in exceptions be as follows:

- bottles containing wine may be sold for consumption with a table meal by customers who are seated in an area set aside from the main bar area for the consumption of food.

**20.27** Glasses containing drinks may be used as weapons during incidents of disorder and in non-toughened form can cause very serious injuries.

Consideration could therefore be given to conditions requiring either the use of polypropylene containers or toughened glass which inflicts less severe injuries where considered necessary. Location and style of the venue and the activities carried on there would be particularly important in assessing whether a condition is necessary. The use of such polypropylene containers or toughened glass during the televising of live sporting events, such as international football matches, when high states of excitement and emotion fuelled by alcohol might arise, may be a necessary condition.

**20.28** It should be noted that the use of polypropylene or paper drinks containers and toughened glass may also be relevant as measures necessary to promote public safety.

#### **20.29 CCTV**

The presence of CCTV cameras can be an important means of deterring and detecting crime at and immediately outside licensed premises.

**20.30** Conditions should not just consider a requirement to have CCTV on the premises but also the precise location of each camera, the requirement to maintain cameras in working order and to retain recordings for an appropriate period of time (recommended 1 month).

**20.31** Applicants are recommended to seek the advice of the Police with regard to the installation of CCTV systems for crime prevention purposes.

**20.32** The Licensing Authority and the Police have agreed that a CCTV must conform with the following:

- CCTV will be provided in the form of a recordable system, capable of providing pictures of EVIDENTIAL QUALITY in all lighting conditions particularly facial recognition.
- Cameras shall encompass all ingress and egress to the premises, fire exits and all areas where the sale/ supply of alcohol occurs.

- Equipment must be maintained in good working order , be correctly time and date stamped , recordings must be kept in date order, numbered sequentially and kept for a period of 31 days and handed to Police on demand.
- The Premises Licence Holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format EITHER DISC or VHS to the Police/Local Authority on demand.
- The Recording equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or other responsible named individual.
- An operational daily log report must be maintained and endorsed by signature, indicating the system has been checked and is compliant, in the event of any failings actions taken are to be recorded. In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS must report the failure to the Police on contact number 0300 333 3000 immediately .

### **20.33 Open containers not to be taken from the premises**

A condition preventing the taking of alcoholic and other drinks from the premises in open containers (e.g. glasses and opened bottles) may be imposed on a particular premises. This condition may be necessary to prevent the potential for crime and disorder or for public nuisance.

### **20.34 Capacity limits**

A condition may be imposed to set a maximum capacity limit on licensed premises or any parts thereof to ensure public safety and the prevention crime and disorder. Where premises are particularly overcrowded this has been shown to increase the risk of conflict between customers.

**20.35** Where such a condition is considered necessary, consideration should also be given to whether door supervisors would be needed to ensure that the numbers are appropriately controlled.

### **20.36 Proof of age cards**

It is unlawful for children under 18 to attempt to buy alcohol just as it is unlawful to sell or supply alcohol to them. To prevent such crimes, it may be necessary for a of “proof of age” scheme to be in place at a premises. Please see the section ‘The prevention of harm to children’ concerning the ‘Challenge 25’ proof of age scheme.

### **20.37 Crime prevention notices**

It may be necessary at some premises for notices to be displayed which warn customers of the prevalence of crime which may target them. For example, in certain areas, it may be necessary for notices to be displayed which advise customers not to leave bags unattended because of concerns about terrorism.

### **20.38 Signage**

It may be necessary for any restrictions on the admission of children to be displayed on or immediately outside the premises so that the consequences of breaches of these conditions would also be clear and to deter those who might seek admission in breach of those conditions.

**20.39** It may also be necessary for a condition to be imposed stipulating notices to be displayed on the premises requesting patrons to leave the vicinity showing consideration to local residents.

### **20.40 High Volume Vertical Drinking**

Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises with

exceptionally high capacities, used primarily or exclusively for the sale and consumption of alcohol, and have little or no seating for patrons.

**20.41** Where necessary and appropriate, conditions can be attached to premises licences for the promotion of the prevention of crime and disorder at such premises (if not volunteered by the venue operator and following representations on such grounds) which require adherence to:

- a prescribed capacity;
- an appropriate ratio of tables and chairs to customers based on the capacity; and
- the presence of SIA registered security teams to control entry for the purpose of compliance with the capacity limit.

**20.42 Premises in the Vicinity of Hereford United – Football**

It is recommended by the Police that applications for the supply of alcohol within a one mile radius of Hereford United Football Club or in any other area which Police intelligence shows that football supporters congregate should include in their application form that on match days the following will apply:-

*For premises licensed for the supply of alcohol for consumption on the premises:*

- Drinks shall only be supplied in polypropylene or toughened glass vessels and all bottled drinks shall be poured into such drinking vessels before being handed to the customer.
- Registered door staff shall be employed to control the entry and exits to the premises and to prevent the taking of alcohol off the premises (e.g. for consumption on the adjoining foot-way)
- If so instructed by a Police Inspector the premises shall be closed if it is considered that violence and/or disorder may take place.

*For premises licensed for the supply of alcohol for consumption off the premises:*

- Registered door staff shall be employed to control the entry and exits to the premises
- If so instructed by a Police Inspector the premises shall be closed if it is considered that violence and/or disorder may take place.

**20.43** Failure to include the above matters in an application form may result in representations being made by the Police on the grounds of crime and disorder.

#### **20.44 Adult Entertainment & Services**

Where no indication is made within the application form that adult entertainment and/or services are to be provided, the licensing authority will add the following condition to the licence: -

- No adult entertainment or services or activities must take place at the premises (Adult Entertainment includes, but is not restricted to, such entertainment or services which would generally include topless bar staff, striptease, lap-table, or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language).

**20.45** Where it is indicated within the application form that adult entertainment and/or services are to be provided it is essential that the applicant carry out a full risk assessment on the licensing objectives of crime and disorder and the protection of children from harm.

**20.46** Herefordshire Council, as the Licensing Authority, has adopted Section 27 of the Policing and Crime Act 2009, which came into force in England on 6 April 2010, which has reclassified lap dancing, striptease and pole dancing as 'Sexual Entertainment Venues' requiring a new licence for which a fee is payable.

**20.47** However the Act does make certain exceptions (principally in relation to premises which do not host more than 11 such events).



**20.48** Where adult entertainment and services are to be provided, it is essential that the applicant carries out a full risk assessment on the licensing objectives of crime and disorder and the protection of children from harm.

**20.49** For striptease and pole dancing type entertainments, the following model conditions may be necessary:

1. All references to striptease shall be deemed to include all forms of dancing and similar entertainment's involving striptease or nudity, or semi - nudity, or the wearing of see through clothing.
2. Only activities to which the Licensing Authority has given written consent shall take place. Such consent may:-
  - designate the areas where the activity is to be performed and viewed from, and
  - stipulate the hours during which the activities may be provided, and
  - stipulate any other terms and restrictions which may be necessary for the proper conduct of the premises or for the protection of children.

The consent from the Licensing Authority may be in a form of a letter or may be included on the actual licence document.

3. The activities shall only be performed on the stage/performance area, and no patron shall be allowed onto the stage/performance area.
4. The activities shall be given only by the performers/entertainers engaged exclusively for that purpose.
5. There shall be no physical contact between patrons and performers. The only exception to this shall be the placing of money or tokens by patrons into collection containers held by the performers.
6. The licensee shall not encourage, or permit encouragement to be made for the throwing of money or tokens at performers.
7. The access to the dressing rooms shall be maintained, so those performers using the access route cannot be obstructed by patrons. No persons other than performers and authorised personnel shall be allowed into the dressing rooms.

8. The activity must not be visible from the outside of the premises (e.g. from the street) or any area inside the premises which has not been designated by the Licensing Authority for the viewing of the activity.
9. Whilst the activity is taking place no person under the age of 18 shall be in any area in the premises where the activity can be viewed. From at least one hour prior to any activity to the conclusion of the activity, a conspicuous notice shall be displayed in a prominent position at each entrance to the area with the following words:-  
'NO ENTRY TO PERSONS UNDER THE AGE OF 18'
10. Copies of the licensee's 'house rules', which have been approved by the Licensing Authority, shall be prominently displayed at the premises. The licensee shall ensure that patrons, performers and staff comply with the 'house rules'.
11. Any external advertising shall be restricted to the times and dates of forthcoming activities and shall not contain any sexually explicit material.

**20.50** For Lap/table dancing type entertainments, the following model conditions may be necessary:

1. All references to lap/table dancing shall be deemed to include all forms of dancing or similar entertainments involving striptease or nudity, or semi - nudity, or the wearing of see through clothing.
2. Only activities to which the Licensing Authority has given written consent shall take place.

Such consent may:-

- designate the areas where the activity is to be performed and viewed from, and
- stipulate the hours during which the activities may be provided, and
- stipulate any other terms and restrictions which may be necessary for the proper conduct of the premises or for the protection of children.

The consent from the Licensing Authority may be in a form of a letter or may be included on the actual licence document.

3. The activities are to be performed only to patrons seated at tables.

4. The activities shall be given only by the performers/entertainers engaged exclusively for that purpose.
5. There shall be no physical contact between patrons and performers. The only exception to this shall be the transfer of money or tokens by patrons to the performers.
6. The licensee shall not encourage, or permit encouragement to be made for the throwing of money or tokens at performers.
7. The access to the dressing rooms shall be maintained, so that performers using the access route cannot be obstructed by patrons. No persons other than performers and authorised personnel shall be allowed into the dressing rooms.
8. The activity must not be visible from the outside of the premises (e.g. from the street) or any area inside the premises which has not been designated by the Licensing Authority for the viewing of the activity.
9. Whilst the activity is taking place no person under the age of 18 shall be in any area in the premises where the activity can be viewed. From at least one hour prior to any activity to the conclusion of the activity, a conspicuous notice shall be displayed in a prominent position at each entrance to the area with the following words:-  
‘NO ENTRY TO PERSONS UNDER THE AGE OF 18’
10. Copies of the licensees 'house rules', which have been approved by the Licensing Authority, shall be prominently displayed at the premises. The licensee shall ensure that patrons, performers and staff comply with the 'house rules'.
11. Any external advertising shall be restricted to the times and dates of forthcoming activities and shall not contain any sexually explicit material.

## *Section 21: Summary*

*These pages address the issue of promoting the licensing objective of the prevention of public safety. It advises that applicants should consider the advice given in these pages when making application and should take it into account. Where appropriate the applicant should make reference to these issues within their application. Where it is felt appropriate the Licensing Authority may address some or all of these issues in the decision making process.*

## **21 PUBLIC SAFETY**

### **21.1 General**

When applicants for premises licences or club premises certificates are preparing their operating schedules or club operating schedules, responsible authorities are considering such applications and licensing authorities are considering applications following the receipt of relevant representations from a responsible authority or interested party, the following options should be considered as measures that, if necessary, would promote public safety. It should also be recognised that special issues may arise in connection with outdoor and large scale events.

**21.2** Whether or not any risk assessment shows any of the measures to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises, the anticipated clientele of the business involved and the competency of the management and staff at the premises.

**21.3** The Licensing Authority will expect all relevant premises to produce a risk assessment and for outdoor events an Event Management Plan.

**21.4** Any individual preparing an operating schedule or club operating schedule is at liberty to volunteer any measure, such as those described below, as a step he or she intends to take to promote the licensing objectives. When incorporated into the licence or certificate as a condition, they become

enforceable under the law and a breach of such a condition could give rise to prosecution.

**21.5** It should be noted that conditions relating to public safety should be those which are necessary, in the particular circumstances of any individual premises or club premises, and should not duplicate other legal requirements. Equally, the attachment of conditions to a premises licence or club premises certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work etc. Act 1974, associated regulations and especially the requirements under the Management of Health and Safety at Work Regulations 1999 and the Regulatory Reform (Fire Safety) Order 2005 to undertake risk assessments. Employers should assess the risks, including risks from fire, and take measures necessary to avoid and control these risks. Conditions enforcing those requirements would therefore be unnecessary.

**21.6** Where existing legislation and regulations do not (in the opinion of the Licensing Authority) adequately cover public safety issues the following matters should be taken into consideration.

**21.7 Safer Clubbing: Guide**

Club owners and promoters will be expected to have regard to “Safer Clubbing: guidance for licensing authorities, club managers and promoters”. The licensing authority will seek to ensure that licensed premises are designed and run in a way which maximises the safety of customers and staff.

**21.8** In order to minimise disputes and the necessity for hearings, it would be sensible for applicants to consult with all responsible authorities when operating schedules are being prepared.

- 21.9** Conditions may be imposed in accordance with operating schedules to protect public safety including where justified:-
- (a) provision of closed-circuit television and panic buttons.
  - (b) use of shatterproof drinking vessels, bottles requiring use of toughened glass or plastic
  - (c) use of security personnel, such as door supervisors, licensed by the Security Industry Authority
  - (d) requirement of a minimum of a licensed door supervisor for every 100 customers in nightclubs and large city centre pubs or as indicated by risk assessment.
  - (e) occupancy capacity conditions will be applied where appropriate.
  - (f) the provision of designated and suitably trained first aiders.

**21.10** In determining applications for new licences or extensions in hours or terminal hours of licensed premises, regard will be had to late night public transport availability and location of taxi ranks to aid dispersal of customers.

### **21.11 Safety Advisor Group**

Where appropriate, licence holders or their authorised representatives will attend Safety Advisory Group and similar meetings prior to large events and shall be part of Event Liaison Teams during such events. Due regard shall be had to relevant guidance and publications including, for example: HSE publications “Event Safety Guide” and “Managing Crowds Safely”; LACORS publication – “Managing Large Events”.

### **21.12 Escape routes**

It may be necessary for public safety to include conditions relating to the maintenance of all escape routes and exits including external exits. These might be expressed in terms of the need to ensure that such exits are kept unobstructed, in good order with non-slippery and even surfaces, free of trip hazards and clearly identified. In restaurants and other premises where chairs and tables are provided this might also include ensuring gangways are kept unobstructed.

- all emergency exit doors can be easily opened without the use of a key, card, code or similar means;
- doors at such exits are regularly checked to ensure that they function satisfactorily and a record of the check kept;
- any removable security fastenings are removed whenever the premises are open to the public or occupied by staff;
- where necessary the edges of the treads of steps and stairways are to be conspicuous from the rest of the stair treads.

### **21.13 Safety Checks**

Consideration might also be given to conditions that ensure that:

- safety checks are carried out before the admission of the public; and
- details of such checks are kept in a Log-book.

### **21.14 Capacity limits**

Consideration might also be given to conditions that ensure that:

- arrangements are made to ensure that any capacity limit imposed under the premises licence or club premises certificate are not exceeded; and
- the licence holder, a club official, manager or designated premises supervisor should be aware of the number of people on the premises and required to inform any authorised person on request.

### **21.15 Emergency action notices**

Consideration might also be given to conditions that ensure that notices detailing the actions to be taken in the event of emergencies, including how the emergency services should be summoned, are prominently displayed and protected from damage and deterioration.

### **21.16 Access for emergency vehicles**

Consideration might also be given to a condition that ensures that access for emergency vehicles is kept clear and free from obstruction.

### **21.17 First Aid**

Consideration might also be given to conditions that ensure that:

- adequate and appropriate supply of first aid equipment and materials is available on the premises;
- A Suitable area is identified that can be used for treatment
- if necessary, at least one suitably trained first-aider shall be on duty when the public are present; and if more than one suitably trained first-aider that their respective duties are clearly defined.
- It should be noted that providers of medical cover at events should be registered and regulated by the Care Quality Commission (CQC) 03000 61617, enquiries@cqc.org.uk

### **21.18 Lighting**

Consideration might also be given to conditions that ensure that:

- in the absence of adequate daylight, the lighting in any area accessible to the public, members or guests shall be fully in operation when they are present;
- emergency lighting is not altered;
- emergency lighting and signage are in working order before the admission of the public, members or guests; and
- in the event of the failure of normal lighting, where the emergency lighting battery has a capacity of one hour, arrangements are in place to ensure that the public, members or guests leave the premises within 20 minutes unless within that time normal lighting has been restored and the battery is being re-charged; and, if the emergency lighting battery has a capacity of three hours, the appropriate period by the end of which the public should have left the premises is one hour.

### **21.19 Temporary electrical installations**

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:



- temporary electrical wiring and distribution systems are not provided without prior inspection by a suitable qualified electrician;
- temporary electrical wiring and distribution systems shall comply with the appropriate standards where they have not been installed by a competent person, temporary electrical wiring and distribution systems are inspected and certified by a competent person before they are put to use.

### **21.20 Indoor sporting events**

Subject to the type of sports provided and the appropriate risk assessments, consideration may be given to conditions to ensure that:

- an appropriately qualified medical practitioner is present throughout a sports entertainment involving boxing, wrestling, judo karate or other sports entertainment of a similar nature;
- where a ring is involved, it is constructed and supported by a competent person and inspected by a competent authority and any material used to form the skirt around the ring is flame-retardant;
- at any wrestling or other entertainment's of a similar nature members of the public do not occupy any seat within 2.5 metres of the ring; and
- at water sports entertainment's, staff adequately trained in rescue and life safety procedures are stationed and remain within the vicinity of the water at all material times (see also Managing Health and Safety in Swimming Pools issued jointly by the Health and Safety Commission and Sport England).

### **21.21 Alterations to the premises**

Premises should not be altered in such a way as to make it impossible to comply with any licensing condition. Licence holders wishing to carry out alterations to their premises should see the advice of the Licensing Team as to the correct licensing procedure. Alterations may mean that an application for a new licence is required or a variation of the licence is required.

## **21.22 Special effects**

The use of special effects in venues of all kinds can present significant risks. Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff.

Special effects which should be considered include:

- dry ice machines and cryogenic fog;
- smoke machines and fog generators
- pyrotechnics, including fireworks;
- real flame;
- firearms;
- motor vehicles;
- strobe lighting;
- lasers
- explosives and highly flammable substances
- foam or similar product.

On the first occasion of their use prior notification shall be given to the Licensing Authority and meet with their approval.

## **21.23 Theatres, cinemas, concert halls and similar places**

There are particular matters in the context of public safety which should be considered in connection with theatres and cinemas. The principle remains that conditions must be necessary and should be established through risk assessment and standardised conditions should be avoided. The points below are for consideration and do not represent a mandatory list.

- Attendants: must be sufficient numbers taking into consideration the other safety measures, the design of the premises and the profile of the persons attending (e.g. performances attracting primarily children). Attendants shall as far as reasonably practicable be evenly distributed throughout all parts of the premises to which the public have access

and keep under observation all parts of the premises to which the audience have access.

- Standing and sitting in gangways etc: persons should not be allowed to:
  - sit in a gangway;
  - stand in a gangway, except for access to and from their seat.
  - stand or sit in front of any exit;
  - stand or sit on any staircase including any landings; or
  - Stand to view the performance except in areas designated in the premises licence or club premises certificate
- Drinks: No drinks (alcohol or other drinks) shall be sold to or be consumed by a closely seated audience except in plastic and paper containers.
- Flammable films; No flammable films should be allowed on the premises without the prior approval of the Fire Brigade.

## *Section 22: Summary*

*These pages address the issue of promoting the licensing objective of the prevention of public nuisance. It advises that applicants should consider the advice given in these pages when making application and should take it into account. Where appropriate the applicant should make reference to these issues within their application. Where it is felt appropriate the Licensing Authority may address some or all of these issues in the decision making process.*

## **22 PREVENTION OF PUBLIC NUISANCE**

### **22.1 General**

Public nuisance includes any noise generated as a result of the activities at the premises including the behaviour of customers whilst arriving, leaving or at the venue. This may include noise from customers' cars arriving, car stereo systems, car horns, vocal noise from customers, or those that transport customers to and from the venue, revving engines, litter and the obstruction of public highway. The area where such problems could occur may extend beyond the immediate vicinity of the premises.

**22.2** When applicants for premises licences or club premises certificates are preparing their operating schedules, the matters dealt with in this annex should be carefully considered as a means to prevent public nuisance.

**22.3** Whether or not any risk assessment shows them to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved.

**22.4** Necessary conditions for licences and certificates will also depend on local knowledge of the premises.

## **22.5 Planning, building control**

Planning, building control and licensing will be properly separated to avoid need to apply for planning permission or building control consent and there is an expectation that these issues will have been explored before licensing applications are submitted.

**22.6** In determining applications for new and varied licences, regard will be had to the location of premises, the type and construction of the building and the likelihood of nuisance and disturbance to the amenity of nearby residents by reason of noise from within the premises, as a result of people entering or leaving the premises or from individuals or groups of customers gathered outside (e.g. in order to smoke).

**22.7** Applications for new licences or for the extension in size of licensed premises should not normally be granted if the premises will use amplified or live music and operate within or abutting premises containing residential accommodation except that occupied by staff of the licensed premises. A condition may be imposed on new licences that entertainment noise shall be inaudible in any residence.

**22.8** Installation of sound limiting equipment and sound insulation may be required to minimise disturbance to the amenity of nearby residents by reason of noise from the licensed premises.

## **22.9 Zoning**

This will be avoided. A general principle of later opening so that customers can leave for natural reasons, slowly over longer periods will be promoted, to prevent unnatural concentrations of people. The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.

**22.10** Generally permitted temporary activities in the open air including tents and marquees should have a maximum closure hour of 11.00 pm. Earlier hours may be imposed in sensitive open spaces or near residential areas.

**22.11** In determining applications for new licences or extensions in hours or terminal hours of licensed premises, regard will be had to late night public transport availability and location of taxi ranks to aid dispersal of customers.

**22.12** Regard will be had to any history or likelihood of nuisance. Generally, favourable consideration will be given to applications for later hours in the city centre and on busy main roads. Powers may be exercised to impose conditions as to hours of opening in order to avoid unreasonable disturbance to residents of the neighbourhood.

**22.13** Reasonable controls are available to all premises operators to minimise the impact of noise from customers outside. The council's Environmental Health Department has issued guidance on a number of steps that can be taken in this respect which are endorsed by this policy.

#### **22.14 Management and control of customers**

Procedures should be put in place to manage the behaviour of customers in so far as it may contribute to public nuisance. These measures may include; management of people who arrive and leave the premises, the placing of signage reminding patrons to arrive and leave quietly, the consideration of arranging a dedicated taxi service, the quick dispersal of customers away from the premises when leaving, when drinking outside is permitted to take into consideration the potential of public nuisance.

#### **22.15 Hours**

The hours during which the licensable activities are permitted at premises by the conditions of a premises licence or a club premises certificate are set for the prevention of public nuisance. But this must be balanced by the

potential impact on disorder which results from artificially early fixed closing times. For example where the premises are in a predominately residential area the potential for public nuisance is greater.

**22.16** Restrictions could be necessary on the times when certain licensable activities take place even though the premises may be open to the public at such times. For example, the playing of recorded music after a certain time might be prohibited, even though, even though other licensable activities are permitted to continue. But also where an external area is permitted to have licensed activity, for example a beer garden, it may be appropriate to cease that activity earlier than the terminal hour of the rest of the premises.

### **22.17 Noise and vibration**

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that:

- Noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by a simple requirement to keep doors and windows at the premises closed, or to use noise limiters on amplification equipment used at the premises;
- Prominent, clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly;
- The use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas are restricted; and
- The placing of refuse – such as bottles – into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

### **22.18 Litter**

Premises that provide food and /or drink for consumption off the premises could create public nuisance in the form of their patrons causing litter

(i.e. food wrappings/containers and drink containers) in the vicinity of the premises and the wider area. Applicants for licences allowing the provision of late night refreshment and the sale of alcohol for consumption of the premises are recommended to consider the problems that litter caused by their operation will cause and the steps that they will take to prevent such nuisance in the vicinity of their premises. The steps that they could take (and include in their application form) include:

1. the provision of waste receptacles outside the premises,
2. notices asking customers to dispose of their rubbish responsibly and not to create litter problems, and
3. the licence holder arranging for the picking up and disposal of litter from their premises in the vicinity of the premises.

### **22.19 Noxious smells**

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that noxious smells do not cause a nuisance to nearby properties and that premises are properly vented.

### **22.20 Light pollution**

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that flashing or particularly bright lights on or outside licensed premises do not cause a nuisance to nearby properties.



### *Section 23: Summary*

*These pages address the issue of promoting the licensing objective of the protection of children from harm. It advises that applicants should consider the advice given in these pages when making application and should take it into account. Where appropriate the applicant should make reference to these issues within their application. Where it is felt appropriate the Licensing Authority may address some or all of these issues in the decision making process.*

## **23 THE PROTECTION OF CHILDREN FROM HARM**

### **23.1 General**

The Licensing Authority will have specific regard to the licensing objective to protect children from harm. This objective includes the protection of children from moral, psychological and physical harm.

**23.2** It is anticipated that Licences will be sought in respect of a wide variety of premises including theatres, cinemas, restaurants, concert halls, cafes, late night takeaways, pubs, bars and nightclubs. It is not possible within this licensing policy to anticipate every situation where children may be at risk. The Licensing Authority will not therefore impose general conditions that apply to all premises, but will expect applicants to offer their own measures within the operating schedule to meet all of the licensing objectives.

**23.3** The Licensing Authority will not seek to limit the access of children to licensed premises unless it appears necessary to protect them from harm. The Licensing Committee will judge the merits of each separate application before deciding whether to impose conditions limiting access to children. The following are some examples of premises that will raise concerns;

- where there have been convictions for serving alcohol to minors or where there is evidence that underage drinking is permitted
- a known association with drug taking or dealing

- . where there is a strong element of gambling on the premises
- . where entertainment or services of an adult or sexual nature are provided

**23.4** It is the committee's expectation that all staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises. Licensed premises staff are required to take reasonable steps to prevent under age sales.

**23.5** To reduce alcohol-induced problematic behaviour by under 18 year olds, to enforce underage purchase and drinking laws and to assist in the protection of children from harm, the licensing authority supports the following measures:-

- (a) Police should exercise powers (Confiscation of Alcohol (Young Persons) Act 1997) to remove alcohol from young people on the street
- (b) Police and trading standards should implement test purchasing to reduce on and off licence sales to under 18 year olds and carry out age challenges to reduce underage drinking in pubs and licensed venues.
- (c) Further take-up of proof of age schemes will be promoted
- (d) In-house, mystery shopper type schemes operated by local businesses will be supported
- (e) Providers of events specifically catering for unaccompanied children should consider whether all staff at such events need to be CRB checked

**23.6** The licensing authority will not seek to require that access to any premises is given to children at all times – under normal circumstances this will be left to the discretion of the licensee. The following areas give rise to concern in respect of children, who will normally be excluded from premises:-

- where there have been convictions for serving alcohol to minors or with a reputation for underage drinking;
- with a known association with drug taking or dealing;
- where there is a strong element of gambling on the premises;
- where entertainment of an adult is commonly provided.
- where premises are used primarily or exclusively for the sale and consumption of alcohol and there is little or no seating for patrons

Options may include:-

- limitations on the hours when children may be present;
- age limitations (below 18);
- limitations or exclusions when certain activities are taking place;
- requirements for an accompanying adult;
- full exclusion of people under 18.

**23.7** It is anticipated that the issue of access to children will be addressed in the Operating Schedule.

**23.8** The Licensing Act makes it an offence to permit children under the age of 16 who are not accompanied by an adult to be present on premises being used exclusively or primarily for the supply of alcohol for consumption on those premises under the authorisation of a Premises Licence, Club Premises Certificate or where that activity is carried on under the authority of a Temporary Event Notice. In addition, it is an offence to permit the presence of children under 16 who are not accompanied by an adult between the hours of midnight and 05.00 am at other premises supplying alcohol for consumption on the premises under the authority of any Premises Licence, Club Premises Certificate or Temporary Event Notice. Outside of these hours, the Act does not prevent the admission of unaccompanied children to a wide variety of premises where the consumption of alcohol is not the exclusive or primary activity at those venues.

- 23.9** Licensees will have effective steps to prevent children from viewing films or video works that are unsuitable due to the age classification of the film that has been imposed by the British Board of Film Classification or the Licensing Authority.
- 23.10** The Licensing Authority will expect that where a significant number of unaccompanied children will be present during a public entertainment event, the licensee will ensure that an adequate number of adult staff are present to control the access, egress and safety in and around the premises. The number of staff required should be assessed by the licensee, taking into account the number of children to be present, the type of entertainment, the characteristics of the premises and any other relevant factor.
- 23.11** Anyone intending to provide staff for the supervision of activities to under 18's will be required to carry out enhanced criminal record checks on all persons involved servicing such activities.
- 23.12** These checks should be entered into a register which should be kept on the premises at all times and made available to the Police or authorised Council Officer on request. Staff shall only be appointed who have been subject to a check and are found to be suitable, if in doubt the applicant should liaise directly with the Police.
- 23.13** The Licensing Authority will specifically require the Operating Schedule to address issues relating to children. Applicants are advised to contact Children's Services directly to seek advice prior to submitting their application.
- 23.14** Premises that sell cigarettes, particularly by vending machines, should have an effective method of ensuring that under 18's should not purchase or be supplied with cigarettes. It is suggested that the vending machines are kept away from self service and unsupervised areas.

**23.15** Where there are restrictions (whether imposed by statute or by the Licensing Authority) on the sale or supply of goods or the provision of services or the showing of films or other entertainment to children below a certain age then the licensee will be required to demonstrate that they have in place a system for verifying the age of the children intended to be supplied with such goods, services or entertainment. Training must be given to all persons who might be in a position to refuse such children. Such training must include

- recognition of age,
- seeking proof of age,
- verifying the authenticity of proof of age cards, and
- handling refusals

**23.16** Premises that sell alcohol should have due regard to proof of age schemes, and this Licensing Authority recommends that the Challenge 25 Policy be used (further details contact Trading Standards). See section 23.30 below for recommended conditions relating to 'Challenge 25'. It should also be noted that there are restrictions on Gambling Activities that children and vulnerable are allowed to access.

### **23.17 Adult Entertainment Services:**

Applicants for licensees should take into account whether entertainment or services of an adult or sexual nature are to be provided at the premises. Whilst it is not possible to give an exhaustive list of such entertainment or services, it would include topless bar staff, striptease, lap/table/pole dancing, performances involving feigned violence or horrific incidents, feigned or actual sex acts or fetishism, or entertainment involving strong and offensive language.

**23.18** It may be necessary to prohibit or limit the access of children to premises where adult entertainment or services are to be provided.

**23.19** Measures that can be contained in applicants operating schedules include:

- . Limitations on the hours when children may be present
- . The prohibition of children under certain ages from the premises when adult entertainment and services are being provided, or when any licensable activity is taking place.
- . Limitations on the parts of the premises to which children have access
- . Age limitations (below 18),
- . Requirements for accompanying adults (including for example a requirement that children under a particular age must be accompanied by an adult).
- . No display or advertising of the adult entertainment or services outside the premises or in the vicinity of the premises, and
- . That it will be impossible to see or hear the adult entertainments or services from outside of the premises, or from outside of the defined area within the premises where the activities are taking place. Whilst each particular application involving adult entertainment or services will be decided on its own particular merits, this Licensing Authority may (for the protection of children) take into account in its determination of the application:
  - . The proximity of the premises to any recognised schools, centres or establishments for the education, training or care of young persons,
  - . The proximity of the premises to leisure centres used for sporting and similar activities by young persons,
  - . The proximity of the premises to any youth club or similar establishment, and
  - . The proximity of the premises to recognised community, welfare, health and similar establishments used specifically or to a large extent by young persons,

Note: the proximity will be determined on each individual application at the informed discretion of the Licensing Officer.

### **23.20 Access for children to licensed premises – in general:**

Conditions attached to premises licences and club premises certificates may reflect the concerns of responsible authorities and interested parties who have made representations but only where the licensing authority considers it necessary to protect children from harm. Whilst applications in relation to premises licences and club premises certificates must be judged by licensing authorities on their individual merits and characteristics, the Secretary of State recommends (unless there are circumstances justifying the contrary) that :

- for any premises with known associations (having been presented with evidence) with or
- likely to give rise to heavy or binge or underage drinking, drugs, significant gambling, or
- any activity or entertainment (whether regulated entertainment or not) of a clearly adult or sexual nature, there should be a strong presumption against permitting any access at all for children under 18 years. Applicants wishing to allow access for children to premises where these associations may be relevant, when preparing operating schedules or club operating schedules or variations of those schedules for the purposes of obtaining or varying a premises licence or club premises certificate should:
  - ~ explain their reasons; and
  - ~ outline in detail the steps that they intend to take to protect children from harm on such premises.
- for any premises, not serving alcohol for consumption on the premises, but where the public are allowed on the premises after 11.00 pm in the evening, there should be a presumption against the presence of children under the age of 12 unaccompanied by adults after that time. Applicants wishing to allow access when preparing operating schedules or variations of those schedules or club operating schedules for the purposes of obtaining or varying a premises licence or club premises certificate should:
  - explain their reasons; and

- outline in detail the steps that they intend to take to protect children from harm on such premises.
- In any other case, subject to the premises licence holder's or club's discretion, the expectation would be for unrestricted access for children subject to the terms of the 2003 Act. An operating schedule or club operating schedule should indicate any decision for the premises to exclude children completely, which would mean there would be no need to detail in the operating schedule steps that the applicant proposes to take to promote the protection of children from harm. Otherwise, where entry is to be permitted, the operating schedule should outline the steps necessary to be taken to promote the protection of children from harm while on the premises.

### **23.21 Exhibition of Films**

It is a mandatory condition on licences authorising the exhibition of films that no person under the age of 18 shall be allowed admission to the exhibition unless the film has been classified as being suitable for their age> the current film classifications are:

- U - Universal. Suitable for audiences aged four years and over.
- PG- Parental Guidance. Some scenes may be unsuitable for young children.
- 12A- Passed only for viewing by persons aged 12 years or older or persons younger than 12 when accompanied by an adult.
- 15 - Passed only for viewing by persons aged 15 years and over.
- 18 - Passed only for viewing by persons aged 18 years and over.

**23.22** Applicants for licences are expected to demonstrate in their application form the steps that they will take to ensure the age classifications are complied with and that no under age person is allowed to view a film



contrary to its classification. Such steps should include an age identification scheme, whereby possible underage persons are required to prove their age.

**23.23** Additional steps should include the steps that:

- before each exhibition at the premises of a film passed by the British Board of Film Classification there shall be exhibited on screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising film, of the statement approved by the Board indicating the classification of the film;
- The age classification of the film shall be displayed both inside and outside the premises, and
- a condition that when a licensing authority has made a recommendation of the restriction of admission of children to a film, notices are required to be displayed both inside and outside the premises so that persons entering can readily be made aware of the classification attached to any film or trailer.

**23.24 Theatres**

The admission of children to theatres, as with other licensed premises, is not expected to normally be restricted unless it is necessary to promote the licensing objective of the protection of children from harm. However, theatres may be the venue for a wide range of activities. The admission of children to the performance of a play is expected to normally be left to the discretion of the licence holder and no condition restricting the access of children to plays will normally be imposed.

**23.25** However, theatres may also present entertainment including, for example, variety shows, incorporating adult entertainment. A condition restricting the admission of children in such circumstances may be necessary.

### **23.26 Performances especially for children**

Entertainment may also be presented at cinemas and theatres specifically for children, and Licensing authorities are expected to consider whether a licence condition should be imposed that requires the presence of a sufficient number of adult staff on the premises to ensure the well being of children present on the premises during any emergency .

**23.27** Where performances are presented especially for unaccompanied children in theatres and cinemas conditions will require:

- an attendant to be stationed in the area(s) occupied by the children, in the vicinity of each exit, provided that on each level occupied by children the minimum number of attendants on duty should be one attendant per 50 children or part thereof.

**23.28** Licensing authorities are expected, having regard to any representations made by responsible authorities on the issue, to also consider whether or not standing should be allowed. For example, there may be reduced risk for children in the stalls than at other levels or areas in the building.

### **23.29 Children in performances**

They are many productions each year that are one-off shows where the cast is made up almost entirely of children. They may be taking part as individuals or as part of a drama club, stage school or school group. The age of those involved may range from 5 to 18. The Children (Performances) Regulations 1968 (as amended) sets out requirements for children performing in a show. Licensing authorities should familiarise themselves with the requirements of these Regulations and not duplicate any of these requirements. However, if it is necessary to consider imposing conditions in addition to these requirements, then the licensing authority may consider the matters outlined below.

- Venue – the backstage facilities should be large enough to accommodate safely the number of children taking part in any performance.
- Fire safety – all chaperones and production crew on the show should receive instruction on the fire procedures applicable to the venue prior to the arrival of the children.
- Special effects - it may be inappropriate to use certain special effects, including smoke, dry ice, rapid pulsating or flashing lights, which may trigger adverse reactions especially with regard to children.
- Care of children – theatres, concert halls and similar places are places of work and may contain a lot of potentially dangerous equipment. It is therefore important that children performing at such premises are kept under adult supervision at all times including transfer from stage to dressing room and anywhere else on the premises. It is also important that the children can be accounted for at all times in case of an evacuation or emergency.

### **23.30 ‘Challenge 25’**

Licensees should note the concern of the authority that drink related disorder frequently involves under 18’s. To prevent illegal purchases of alcohol by such persons, the committee recommend that all licensees should adopt the Challenge 25 ‘proof of age’ scheme. Appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the Joint Tasking Group (passport or photo driving licence).

**23.31** It is unlawful to sell or supply alcohol to persons under the age of 18, and applicants are recommended to adopt the ‘Challenge 25’ policy. The recommended conditions are:

1. The Licensee to adopt a “Challenge 25” policy where all customers who appear to be under the age of 25 and attempt to purchase alcohol or other age-restricted products are asked for proof of their age.

The Licensee to prominently display notices advising customers of the “Challenge 25” policy.

The following proofs of age are the only ones to be accepted:

- . UK Photo Driving licence
- . Passport

2. Staff Competence and Training:

The Licensee to keep a written record of all staff authorised to sell alcohol, the record to contain the full name, home address, date of birth and national insurance number of each person so authorised. The staff record to be kept on the licensed premises and made available for inspection by the Licensing Officer, Trading Standards or the Police.

The Licensee to ensure that each member of staff authorised to sell alcohol has received adequate training on the law with regard to age restricted products and that this has been properly documented and training records kept. The training record to be kept on the licensed premises and made available for inspection by the Licensing Officer, Trading Standards or the Police.

The Licensee to ensure that each member of staff authorised to sell alcohol is fully aware of his/her responsibilities in relation to verifying a customer’s age and is able to effectively question purchasers and check evidence of proof of age.

The Licensee to ensure that each member of staff authorised to sell alcohol is sufficiently capable and confident to confront and challenge under – 18s attempting to purchase alcohol.

3. Refusals Book:

The licensee to keep a register of refused sales of all age- restricted products (Refusals Book).

The refusals book to contain details of time and date, description of the attempting purchaser, description of the age restricted products they attempted to purchase, reason why the sale was refused and the name/signature of the sales person refusing the sale.

The Refusals book to be examined on a regular basis by the Licensee and date and time of each examination to be endorsed in the book.

The Refusals Book to be kept on the licensed premises and made available for inspection by the Licensing Officer, Trading Standards or the Police.

*Section 24: Summary*

*Information will be shared between partners and other government agency. Members of the public, who make a justifiable request for information, will be provided with it, except personal details.*

## **24. INFORMATION SHARING**

### **24.1 Licensing Act 2003**

In accordance with Section 185 of the Licensing Act 2003 the licensing authority and the responsible authorities will share information with each other for the purposes of facilitating the exercise of the authority's functions under this Act.

### **24.2 Data Protection Act**

Information provided on application forms which was required to process applications and/or to administer the service. It may have contained personal data about the applicant or other person. As the data controller of that information, Herefordshire Council will process that personal data in accordance with the provisions of the Data Protection Act 1998.

**24.3** Where necessary we may share this personal data with partner organisations for the protection of public funds administered which may include the prevention or detection of fraud and auditing purposes.

### **24.4 Requests for Information**

The Licensing Authority will provide information contained within Part A of the premises licence, whenever reasonable, other than those details which would be excluded by a freedom of information request.

*Section 25: Summary*

*This page provides details of where further information can be found.*

## **25 OTHER REFERENCES & GUIDANCE**

Applicants are recommended prior to making an application to have regard and to take into consideration in their application the following documents (as appropriate to their premises and the activities that will be provided):-

- The Guidance and information on licensing provided on the website of the Home Office
- Technical Standards for Places of Entertainment – available from the Licensing Team.
- Home Office: Safer Clubbing Guide
- Metropolitan Police: Safe and Sound ('helping you to manage the threat posed by drugs, weapons and other crime'),
- LACORS/TSI Code of Practice on Test Purchasing
- Guidance issued by the Security Industry Authority in connection with door supervisors etc.
- The Event Safety Guide: A Guide to Health, Safety and Welfare at Music and Similar Events' - HSG195
- Managing Crowds Safely HSE 2000 ISBN 07176-1834-X
- '5 Steps to Risk Assessment: Case Studies' HSE 1998 ISBN 0-7176-15804
- 'The Guide to Safety at Sports Grounds' The Station Office 1997 ("The Green Guide")
- 'Safety Guidance for Street Arts, Carnivals, Processions and Large-Scale Outdoor Performances' Independent Street Arts Network (ISAN) available from:  
<http://www.streetartsnetwork.org.uk/pages/publications.htm>
- The Guidance issued by the Department of Communities and Local Government under the Regulatory Reform (Fire Safety) Order 2005.  
Web site: [www.communities.gov.uk](http://www.communities.gov.uk)

*Section 26: Summary*

*This section details other policies which may be associated with licensing of premises.*

**26 OTHER POLICIES AND OBJECTIVES**

**26.1** Other statutory obligations which fall outside the requirements of the Licensing Act 2003 may apply to the provision of any regulated activities at a premises and the responsibility for compliance lies with the licence holder. For example if the activity involves the preparation and/or sale of food then it is the responsibility of the applicant to ensure that all appropriate Food Safety legal requirements are met, or if alcohol is sold the full weights and measures requirements are met. It would be expected that a licensee would have registered the premises as a food business with Herefordshire Council. Such registration is not a Licensing requirement however businesses are expected to comply with all relevant legislation.

**26.2** Many of the specific licensing requirements relate to matters potentially affecting public safety. In addition to these licensing requirements there are wider duties on all business (whatever their legal status and regardless of whether a licence is needed) to protect the health and safety of employees (and the self employed) as well as the public. Some of these duties are deliberately wide, generalised and all encompassing e.g. main duties under Section 2, 3, & 4 of the Health & Safety at Work etc. Act 1974, others are very specific e.g. requirements under the Control of Substances Hazardous to Health Regulations 2002, and do not apply in all circumstances. Some of these duties are absolute under law and have to be complied with, without exception e.g. hoists and lifting equipment must be examined by a competent person at prescribed intervals. Thus these Health & Safety duties tend to include all specific safety requirements under licensing requirements for the public on the premises and extend them to cover the safety of others e.g. staff,



contractors, passers by etc. Thus there is considerable overlap between the licensing regime and the wider health & safety regimes.

**26.3** The Licensing Authority will seek to achieve integration with relevant strategies and their aims in determining applications and will do so through relevant consultation of this policy and individual applications. Development Control may make representations in connection with a licensing application if an application has an adverse impact on any the four objectives.

#### **26.4 The Human Rights Act 1988**

The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a Local Authority to act in a way that is incompatible with a Convention Right. The Council will have particular regard to the following relevant provisions of the European Convention on Human Rights:

- Article 6 that in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
- Article 8 that everyone has the right to respect for their home and private life; and
- Article 1 of the First Protocol that every person is entitled to the peaceful enjoyment of their possessions, including for example the possession of a licence.

#### **26.5 The Disability Discrimination Act 1995**

The Disability Discrimination Act 1995 introduced measures to tackle discrimination encountered by disabled people in the areas of employment, access to goods, facilities and services and the management, buying or renting of land or property. For service providers, such as licensees this means;

- It has been unlawful to treat disabled people less favourably than other people for a reason related to their disability;

- Reasonable adjustments should be made for disabled people, such as providing extra help or making changes to the way they provide their services; and
- Reasonable adjustments should be made to the physical features of premises which are open to the public.

## **26.6 Herefordshire's Race Equality Strategy**

Herefordshire has published its Race Equality Strategy in which Herefordshire sets out how it aims to address race equality issues in the County. The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups. Local Authorities are also required under the Race Relations Act 1976 as amended, to produce a race equality scheme, by assessing and consulting on the likely impact of proposed policies on race equality, by monitoring policies for any adverse impact on the promotion of race equality, and by publishing the results of such consultations, assessments and monitoring.

## **26.7 Government Drinking Strategy**

The Government has published an Alcohol Harm Reduction Strategy for England, in this it outlines how the Licensing Act can be used to address some of the Social Health and Crime & Disorder issues raised by the misuse of alcohol, when the Licensing Authority is considering applications for any relevant licence made under the act. This strategy will be taken into account specifically with regard to the sale of alcohol to under 18's and the impact of lack of effective steps to tackle anti-social behaviour.

## **26.8 Herefordshire's Crime & Disorder Strategy**

Herefordshire's Crime & Disorder Strategy will play a part in achieving some if not all of the objectives in reducing crime and disorder. In

addition to this Anti Social Behaviour Strategy will focus on the first stage of the challenge, which is to make sure that the Council's efforts and relevant resources are working together effectively to reduce anti social behaviour across the County. The Mayor has committed the Council to be effective in this area and has approved the development of a Anti Social Behaviour Division to concentrate on revising the Council's operational arrangements, strengthening the ways of working together with local communities and making our work with other key agencies much more effective. As such, these developments will form the Council's position and contribution to the wider multi-agency strategy that will be produced under the Herefordshire Community Safety Partnership. The drive to deal with under age drinking and the impact that has on anti social behaviour will be managed through as part of this strategy.

#### **26.9 Government & Police Guidance for Clubs and other licensed premises**

For premises which may have problems with drugs, crime and disorder and/or are open late the Council will refer to the guidance given and will expect applicants in their operating schedules to use the strategies outlined in the Home Office Drug Strategy booklet – Safer Clubbing (ISBN Number: 1840827807). Copies of this booklet can be obtained from the Drug Prevention Advisory Service at [www.drugs.gov.uk](http://www.drugs.gov.uk). The Metropolitan Police have also compiled a booklet entitled Safe and Sound which is available from Metropolitan Police, Clubs and Vice, Charing Cross Police Station, London WC2N 4JP Tele: 020 7321 7759

#### **26.10 Tourism & Employment**

Herefordshire has leisure, tourism and sports strategies that address the issues of the local tourist economy. Arrangements will be made to keep the Committee apprised of the strategies, and where appropriate the Committee will also be advised of the employment situation and the need for any new investment in a particular area.

### **26.11 Fire Protocol**

Hereford & Worcester Fire and Rescue Service have extensive experience when dealing with Licensing application, particularly in respect of outside events and are more than happy to offer guidance where required.

### **26.12 Planning Permissions**

All applicants for Premises Licences, Club Premises Certificates and Provisional Statements are reminded that planning permission will normally be required for such uses. Such planning consents may carry conditions with which applicants are expected to comply otherwise action may be taken under the relevant planning legislation. In general, planning consents authorise a broad type of use of a premises, whereas licences are granted for a particular type of activity. A planning permission for an entertainment use, for example may cover a number of activities that can have a wide range of different impacts in the locality.

**26.13** Licensing applications must not be seen as a re-run of the planning application process and there is a clear separation of the planning and licensing regimes to avoid duplication and inefficiency. The Licensing Committee will ensure that the Planning Committee is advised of the situation regarding licensed premises in the Herefordshire including the general impact of alcohol related crime and disorder and any proposals to introduce a saturation policy to assist them in its decision making process. The purpose of a cumulative impact policy is to minimise the cumulative impact of licensed premises where it can be shown that the density of licensed premises is such that it is resulting in anti-social behaviour, noise, or crime and disorder. This conflict may be the result of the late night demand on local resources, for example the queuing for fast food outlets, public transport, etc.

- 26.14** The Licensing Authority however will not take demand into account when considering an application as this is a commercial decision and a matter for planning control and the market.
- 26.15** The Herefordshire Unitary Development Plan (UDP) (June 2001) is the statutory land use document containing the principles of development for Herefordshire. Some of the use classes that are considered under Leisure, Shopping and Retail policies of the UDP are Entertainment, Food and Drink. The UDP is being replaced with the LDF.
- 26.16** The potential impact of hot food takeaways, restaurants, pubs and clubs on the local environment and the amenity of the surrounding areas, particularly if proposed on a site that is adjacent to residential properties has to be carefully considered. Consideration also has to be given to the important role that leisure and entertainment uses can play in the regeneration of the economy for Herefordshire.

## **ANNEX 1**

### **SPECIAL CUMULATIVE IMPACT POLICY**

- A1** The Council recognises that the cumulative effect of licensed premises may result in adverse effects on the licensing objectives and amenity and this in turn may have a number of undesirable consequences, for example:
- An increase in crime against both property and persons;
  - An increase in noise and disturbance to residents;
  - Traffic congestion and/or parking difficulties;
  - Littering and fouling.
- A2** The licensing policy is not the only means of addressing such problems. Other controls include:
- planning controls
  - CCTV
  - provision of transport facilities including Taxi Ranks
  - Alcohol Disorder Zones
  - Designated Public Places Orders
  - police powers
  - closure powers
  - positive measures to create safer, cleaner and greener spaces
- A3** Where the Council recognise there is such a cumulative effect it will consider adopting a specific Cumulative Impact Policy for an area if this proves necessary.
- A4** The Guidance to the Act states that the cumulative impact of licensed premises on the promotion of their licensing objectives is a proper matter

for a licensing authority to consider in developing its Statement of Licensing Policy.

**A5** In accordance with the Guidance the Council consulted on the proposal for Cumulative Impact Zones in the area identified as part of the wider consultation on the council's revision of its Statement of Licensing Policy during 2010. Consultation was therefore specifically undertaken with:

- The Responsible Authorities
- Licensees and those representing licensees
- Local Residents and Businesses
- Those representing local residents and businesses.

**A6** In considering whether to adopt such a Policy for the areas, the council took the following steps as recommended by the Guidance:

- Gather crime and disorder statistics, ambulance service statistics, data from A & E and such other statistics that may be appropriate
- Identify serious and chronic concern from a responsible authority or from residents or local businesses (or their representatives) concerning nuisance and/or disorder;
- Identify the area in which problems are arising and the boundaries of that area

**A7** As a result the Council has designated the following areas within Herefordshire as being subject to a special Cumulative Impact Policy:

- The full length of Commercial Road from its junction with Blueschool Street to its junction with Aylestone Hill.
- 100 metres of Blueschool Street, West from its junction with Commercial Road.
- 50 metres of Bath Street, East from its junction with Commercial Square.
- 50 metres of Commercial Street, South from its junction with Commercial Square.
- 50 metres of Union Street, South from its junction with Commercial Square.

**A8** A summary of the evidence of the problems being experienced is attached to the bottom of this policy. The Licensing Authority are of the opinion based on the evidence that the number of licensed premises in the above areas adversely affect the promotion of the licensing objectives of:

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

**A9** Whilst the summary of the evidence was mainly based on crime and disorder, this Council is of the opinion that such crime and disorder also materially and severely affects the promotion of the other licensing objectives in the above areas.

**A10** The effect of the Cumulative Impact Policy is that it creates a rebuttable presumption that application within the cumulative impact area will normally be refused: -

1. Where relevant representations are received against any:  
New applications for Premises Licences, Club Premises Certificates or Provisional Statement, or Variation applications for an existing Premises Licences or Club Premises Certificates
2. Where the police have issued an objection notice in respect of a Temporary Event Notice

**A11** However, this Policy will not prevent applications in the above areas. Each case will be decided on its own merits, but applicants will have to comprehensively demonstrate in their application that it will not add to existing problems in the area.

**A12** The special policy will apply to all the licensable activities of:

- The sale by retail of alcohol,



- The supply of alcohol by or on behalf of a club to, or to the order of a member of the club,
- Regulated entertainment, and
- The provision of late night refreshment

<b>All Violent Crimes Recorded 2009/10 - Public Place ONLY, by Weekday – Commercial Road Area</b>				
<b>All Offence Groups, Public Place Only</b>				
	<b>Alcohol Involved?</b>		<b>Grand Total</b>	<b>% Alcohol Related</b>
	<b>N</b>	<b>Y</b>		
<b>Monday</b>	<b>39</b>	<b>20</b>	<b>59</b>	<b>33.9%</b>
<b>Tuesday</b>	<b>43</b>	<b>24</b>	<b>67</b>	<b>35.8%</b>
<b>Wednesday</b>	<b>56</b>	<b>28</b>	<b>84</b>	<b>33.3%</b>
<b>Thursday</b>	<b>32</b>	<b>28</b>	<b>60</b>	<b>46.7%</b>
<b>Friday</b>	<b>55</b>	<b>56</b>	<b>111</b>	<b>50.5%</b>
<b>Saturday</b>	<b>47</b>	<b>98</b>	<b>145</b>	<b>67.6%</b>
<b>Sunday</b>	<b>33</b>	<b>79</b>	<b>112</b>	<b>70.5%</b>
<b>Grand Total</b>	<b>305</b>	<b>333</b>	<b>638</b>	<b>52.2%</b>



<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>1 FEBRUARY 2011</b>
<b>TITLE OF REPORT:</b>	<b>CHANGES TO THE CONSTITUTION FOR REGULATORY COMMITTEE</b>
<b>REPORT BY:</b>	<b>ASSISTANT CHIEF EXECUTIVE LEGAL AND DEMOCRATIC</b>

**CLASSIFICATION:** Open

### **Purpose**

To note the changes to the Council's Constitution for the Regulatory Committee and delegate certain functions to the Regulatory Sub-Committee.

### **Recommendations**

**THAT :**

- a) the changes to the Constitution regarding the Regulatory Committee be noted
- b) the responsibility for hearing appeals, revocation of licences and applications for footpath diversions which fall within the remit of the Regulatory Committee, be delegated to the Regulatory Sub-Committee

### **Key Points Summary**

- Phase three of the review of the Council's constitution was carried out during the autumn of last year and included changes to the provisions regarding the Regulatory Committee. A review group was appointed by the Constitutional Review Working Group (CRWG) and comprised of the Chairman of the Committee, Councillor Seldon, Assistant Chief Executive (Legal and Democratic Services) (Interim), Assistant Director Public Health), Regulatory Services Manager, Committee Manager (Planning & Regulatory) and Democratic Services Officer (Planning & Regulatory).
- The proposals in the review were approved by Council at its meeting on 19th November 2010 and are set out in appendix A to this report.
- The Committee has also been asked by Council to review its procedures and this will be dealt with as a separate process.

## **Alternative Options**

- 1 The alternative options have been discussed at Council, the CRWG and other appropriate bodies.

## **Reasons for Recommendations**

- 2 The changes to the Constitution clarify the responsibilities regarding regulatory matters which fall to the Committee, Cabinet or the officers and provide safeguards for review and appeal. The changes have also brought about a consistency within the Functions Scheme and other areas of the Constitution.
- 3 An officer review panel is being established with powers to deal with certain taxi licensing matters but not to revoke licences. The proposal is that the Sub-Committee, in addition to its existing duties, will hear appeals arising from this officer panel in relation to the refusal of taxi driver applications and panel recommendations for the revocation of existing licences. The Sub-Committee will therefore be delegated to revoke any licence, permission consent or certificate granted by the Council, except where a separate statutory framework exists, and to deal with certain footpath/bridleway diversion matters which fall within the remit of the Regulatory Committee.
- 4 The aim is to give greater flexibility to the Committee by removing the need for it to have to deal with relatively routine licensing and footpath diversion matters, as is the case at the moment. This will free up the Committee to deal with the more strategic matters and policy issues, and receive information about the performance of the departments involved in the regulatory process.

## **Introduction and Background**

- 5 The Council has been undertaking a process of Constitutional Review since June 2009. The work has been done under the guidance and direction of the cross party CRWG. Phase three of that process has included the constitutional arrangements for discharge of Regulatory functions. Part of the process is to delegate certain responsibilities to the Regulatory Sub-Committee which will give greater flexibility to the process. The Sub-Committee will meet on a regular basis with three Members drawn from the Committee on a rota basis.
- 6 It is important that the Committee is kept informed of the regulatory matters that are dealt with in this way and the intention is to submit regular reports to it about the activities of the Sub-Committee and the officer review panel.

## **Key Considerations**

- 7 The Council's Constitution provides for the Regulatory Committee to carry out the functions of the Council relating to trading standards, consumer protection, animal health, environmental protection, food safety, some highway functions and the consideration of appeals against the refusal of some licences. The Regulatory Sub-Committee has been in existence since 2005 and was established to determine individual applications for licensable activities under the Licensing Act 2003 and the Gambling Act 2005. The intention is to expand its role to include the other regulatory functions which are outlined above and currently sit with the Committee.
- 8 The Constitution has been changed so that matters delegated to the Chief Executive and in turn the Directors about the regulatory function are clarified and are consistent throughout the functions scheme. Information is also included about the types of licences which are the subject of a right of appeal to the Regulatory Committee. It also sets out the non-executive

functions within its remit, the “local choice functions” which are vested in it and those which rest elsewhere.

- 9 There is also a need to have a consistent approach across departments regarding the safeguarding of ‘vulnerable persons’. Some of the regulatory functions could have an impact on safeguarding and the Constitutional changes seek to ensure consistency with the regulatory functions. This will be done through:
- i. officers discharging regulatory functions also having regard to the Council’s safeguarding functions.
  - ii. the officer review panel being comprised of officers from regulatory and safeguarding where cross-directorate considerations make it appropriate. The police will be invited to attend. The panel may also review an officer decision prior to but not as an alternative or replacement for a full appeal if that is requested by an applicant
  - iii. safeguarding officers providing expert evidence and advice to the Regulatory Committee and the Sub-Committee at hearings.
- 10 The changes agreed at Council preserve the right of appeal to the Committee and that only the Committee or Sub-Committee may revoke licences.
- 11 Council also decided that key stakeholders should be consulted about the proposals and this process has involved Members, the appropriate officers from the Council, and the West Mercia Police representative. It is felt that the new arrangements will enhance the coordinated approach between departments, provide greater flexibility for the way in which matters are dealt with and create a less ‘daunting’ environment for applicants to present their case. It will also help to enhance the way in which the Council fulfils its safeguarding role and overcome potential difficulties where legislation and regulations for hackney carriage/private are different for those governing school contracts. It will also allow for meetings to be held more frequently if required, because the Sub Committees will only have three members.

## **Community Impact**

- 12 These amendments to the Constitution have sought to clarify the roles and responsibilities for the discharge of regulatory functions and to enable stakeholders and the public to understand the arrangements more clearly. By clarifying that officers have delegated authority to fulfil regulatory functions not reserved to Committee, the system is much simpler and preserves the role of the Committee/Sub-Committee to be the arbiter on contentious matters and deal with licence revocation. The Committee will set the detailed policy framework for the conduct of all regulatory functions and this will ensure that community interests are reflected in the regulatory policy and procedural framework.

## **Financial Implications**

- 13 The changes to Regulatory functions have been made to provide greater clarity and consistency in the way these are discharged and have minimal financial impact which will be absorbed within existing budgets. The more frequent use of Regulatory Sub Committees will also be a cost saving, in comparison with the need for a full Regulatory Committee to meet each month.

## **Legal Implications**

- 14 The amendments to the Constitution reflect all appropriate statutory requirements and guidance.

## **Risk Management**

- 15 There are no risk management issues other than the need to ensure legal compliance.

## **Consultees**

- 16 The Committee and appropriate officers have been consulted on the proposals. The regulatory review working group considered and proposed the changes.
- 17 All Councillors were invited to comment on the proposals.

## **Appendices**

- Appendix 1** Revised Parts 1, 2 and 3 of the Constitution which were approved by Council on 19th November 2010.

## **Background Papers**

The reports included in the Council agenda on 19th November 2010.

REVISED PARTS 1, 2 AND 3 OF THE CONSTITUTION APPROVED BY COUNCIL  
ON 19TH NOVEMBER 2010



PART 1 – INTRODUCTION AND SUMMARY

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*That the existing paragraphs 1.16.1 and 1.16.2 be replaced with*

**Planning and Regulatory**

- 1.16.1 The Council has established a Planning Committee that is responsible for the Council's statutory town and country planning and development control functions as set out elsewhere in the Constitution
- 1.16.2 The Council has established a Regulatory Committee that is responsible for the Council's statutory regulatory functions as set out elsewhere in the Constitution



PART 2 – ARTICLES

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*That the existing paragraph 2.8.2 be replaced with:*

**2.8.2 Regulatory Committee**

**Composition**

- 2.8.2.1 The Regulatory Committee comprises 11 Councillors.

**Role**

- 2.8.2.2 The Regulatory Committee is responsible for the use of the Council's regulatory powers and the carrying out of Council's regulatory duties. The Committee's roles and functions are set out in the Functions Scheme at Part 3 section 6

- 2.8.2.3 The Council has also established a Regulatory Sub-Committee

**2.8.3 Regulatory Sub-Committee**

**Composition**

- 2.8.3.1 The Regulatory Sub-Committee comprises any three members of the Regulatory Committee drawn from the membership of the Regulatory Committee by the Chief Executive.

## Role

- 2.8.3.2 The Regulatory Sub-Committee has the roles and functions as set out in the Functions Scheme at Part 3 section 6 and such functions as the Regulatory Committee may from time to time delegate to it



## PART 3 - THE FUNCTIONS SCHEME

***That the footnote to Table in paragraph 3.2.1 be added to the following section 2***

# Section 2 - Council Functions

This section explains the Council Functions and who carries them out. Council Functions are local authority functions which by law cannot be carried out by the Cabinet.

### 3.2.1 Delegation of Council functions

- 3.2.1.1 The Council has decided that the functions in Column 1 will be carried out by the body or officer in Column 2.

<b>Column 1 What is the function</b>	<b>Column 2 Who can carry the function out</b>
Adopting and changing the Constitution	Council Meeting Monitoring Officer (technical changes or those required by law only)
Approving or adopting the Policy Framework, the Budget and any application to the Secretary of State in respect of any Housing Land Transfer	Council Meeting only
Subject to the Urgency Procedure in the Access to Information Rules, making a decision contrary to the Policy Framework or the Budget, or part of it	Council Meeting only
Appointing the Leader of the Council	Council Meeting only
Setting the terms of reference of committees, deciding on their composition and allocating seats on them	Council Meeting only
Appointing representatives to outside bodies	Chief Executive as set out in the functions scheme, unless appointment retained by Council as a whole
Agreeing the Members Allowances Scheme	Council Meeting only
Changing the name of the area	Council Meeting only
Giving someone a civic honour or title	Council Meeting only
Planning and development control functions including enforcement for which the Council	Planning Committee/Chief Executive as set out in this



<b>Column 1 What is the function</b>	<b>Column 2 Who can carry the function out</b>
is responsible in Schedule 1 of the Functions Regulations	Functions Scheme
Hedgerow and tree preservation functions for which the Council is responsible in Schedule 1 of the Functions Regulations	Planning Committee/Chief Executive as set out in this Functions Scheme
Rights of way functions for which the Council is responsible in Schedule 1 of the Functions Regulations	Regulatory Committee/Chief Executive as set out in this Functions Scheme
Licensing and registration functions for which the Council is responsible in Schedule 1 of the Functions Regulations	Regulatory Committee/Chief Executive as set out in this Functions Scheme
Health and safety at work functions (other than those relating to the Council itself as an employer) for which the Council is responsible in Schedule 1 of the Functions Regulations	The Chief Executive
Elections functions in Schedule 1 of the Functions Regulations	Council Meeting Chief Executive(as Returning Officer and Electoral Registration Officer)
Byelaw Functions in Regulation 2 and Schedule 1 of the Functions Regulations	Council Meeting
Power to promote or oppose local or personal bills set out in Regulation 2 and Schedule 1 of the Regulations	Council Meeting only
Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal)	Council Meeting / Employment Panel/ Chief Executive as set out in the Functions Scheme
Duty to make arrangements for the proper administration of financial affairs	Council Meeting/Chief Executive/s.151 Officer as set out in the Functions Scheme and the Financial Procedure Rules
Power to appoint Officers for particular purposes (otherwise called the appointment of proper officers)	Council Meeting /Monitoring Officer as set out in the Functions Scheme
Approval of the appointment of the Chief Executive and duty to designate an Officer as the Head of Paid Service	Council Meeting only
Duty to designate Officers as the Monitoring Officer and the s 151 Officer and to provide staff	Council Meeting only
Duty to approve the Council's statement of accounts, income and expenditure and balance sheet, or record of payments	Council function delegated to the Audit and Governance Committee
Powers relating to overview and scrutiny	Council Meeting/Overview and Scrutiny Committee/Scrutiny Committees as set out in the Functions Scheme
Community governance review	Council Meeting only

Footnote:

Where in the above table it indicates that the functions are to be discharged by a Committee, an officer and/or another body, some elements of the function are discharged by an officer or other body on behalf of the Committee or the Council. The specific arrangements are explained elsewhere in the Functions Scheme

***That the footnote to Table in paragraph 3.4.1 be added to the following section 4***

## Section 4 - Local Choice Functions

The Council must choose by law who carries out some functions (known as Local Choice Functions) set out in the Functions Regulations.

### 3.4.1 Allocation of functions

The Council has decided that the functions in Column 1 will be carried out by the body or officer in Column 2.

<b>Column 1 What is the function</b>	<b>Column 2 Who can carry the function out</b>
Any function under a local Act other than a function specified or referred to in regulation 2 or Schedule 1.	Cabinet/Cabinet Member as set out in the Functions Scheme
The determination of an appeal against any decision made by or on behalf of the authority.	Cabinet/Chief Executive as set out in the Functions Scheme
The appointment of review boards under regulations under subsection (4) of section 34 (determination of claims and reviews) of the Social Security Act 1998.	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements in relation to appeals against the exclusion of pupils from maintained schools pursuant to section 52 of the Education Act 2002 and the subordinate legislation made under that section.	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements pursuant to sections 94(1) (1A) and (4) of the 1998 School Standards and Framework Act (admissions appeals)	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements pursuant to section 95(2) of, and Schedule 25 to, the 1998 Act (children to whom section 87 applies: appeals by governing bodies).	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements under section 20 (questions on police matters at council meetings) of the Police Act 1996 for enabling questions to be put on the discharge of the functions of a police authority.	Chief Executive after consultation with the Chairman of the Council
The making of appointments under paragraphs 2 to 4 (appointment of members by relevant councils) of Schedule 2 (police authorities established under section 3) to the Police Act 1996.	Cabinet/Chief Executive as set out in the Functions Scheme
The conducting of best value reviews in accordance with the provisions of any order for the	Cabinet/Chief Executive as set out in the Functions Scheme

<b>Column 1 What is the function</b>	<b>Column 2 Who can carry the function out</b>
time being having effect under section 5 (best value reviews) of the Local Government Act 1999.	
Any function relating to contaminated land.	Landowner responsibilities: Cabinet Member (Environment & Strategic Housing) Other Functions: Regulatory Committee
The discharge of any function relating to the control of pollution or the management of air quality.	Strategic and Policy: Cabinet Member (Environment & Strategic Housing) Other functions: Regulatory Committee
The service of an abatement notice in respect of a statutory nuisance.	Cabinet/Chief Executive as set out in the Functions Scheme
The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.	Cabinet/ Cabinet Member (Environment & Strategic Housing)
The Inspection of the authority's area to detect any statutory nuisance.	Cabinet/Chief Executive as set out in the Functions Scheme
The investigation of any complaint as to the existence of a statutory nuisance.	Cabinet/Chief Executive as set out in the Functions Scheme
The obtaining of information under section 330 of the Town and Country Planning Act 1990.	Cabinet/Chief Executive as set out in the Functions Scheme
The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	Cabinet/Chief Executive as set out in the Functions Scheme
The making of agreements for the execution of highways works.	Cabinet/Chief Executive as set out in the Functions Scheme
The appointment of any individual (a) to any office other than an office in which he is employed by the authority; (b) to any body other than (i) the authority; (ii) a joint committee of two or more authorities; or (c) to any committee or sub-committee of such a body, and the revocation of any such appointment.	Cabinet/ Chief Executive as set out in the Functions Scheme

Footnote:

Where in the above table it indicates that the functions are to be discharged by a Committee, an officer and/or another body, some elements of the function are discharged by an officer or other body on behalf of the Committee or the Council. The specific arrangements are explained elsewhere in the Functions Scheme

## Section 6 – Other Functions

*That the existing paragraph 3.6.2 in Section 6 of the Functions Scheme be replaced with the following new paragraph 3.6.2:*

### **3.6.2 Regulatory Functions**

#### **The Regulatory Committee**

- 3.6.2.1 The Regulatory Committee shall be responsible for the discharge of the Council's regulatory functions as specified in this section of the Functions Scheme
- 3.6.2.2 The Regulatory Committee's role is
- a. to oversee the discharge of the Council's regulatory functions and exercise of regulatory powers and duties of the Council including trading standards and consumer protection, animal health and welfare, environmental health (including Public Health, Control of Pollution (including noise), Contaminated Land, Environmental Protection (including statutory nuisance), Food Acts and related legislation, hackney carriage and private hire, licensable activities under the Licensing Act 2003, Gambling Act 2005, Local Government (Miscellaneous Provisions) Act 1982 (as amended), cinema, theatre and other public entertainment, house to house and street collections and other miscellaneous regulatory functions not within the remit of any other Council body
  - b. to hear appeals against the refusal of any licences, decisions taken and conditions imposed in any regulatory matter by any officer or officer panel established for the purpose of carrying out or reviewing any action taken by any officer pursuant to the Chief Executive's delegated authority to discharge the Council's regulatory functions and to revoke any licence, permission consent or certificate granted by the Council, except where a separate statutory framework exists. The Regulatory Committee may exercise these functions by delegation to the Regulatory Sub-Committee.
  - c. to consider and approve detailed regulatory policies and procedures other than those that require approval by Council or fall within the overall executive strategic and policy remit of the Cabinet and to ensure that the detailed regulatory policies and procedures provide a robust framework and criteria within which officers discharge the regulatory functions of the Council pursuant to the Chief Executive's delegated authority to discharge the Council's regulatory functions
  - d. For the purposes of this section the regulatory functions within the remit of the Regulatory Committee include all licensing and registration functions in Part B of Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000 as amended from time to time and the miscellaneous functions in paragraphs 1-7 of Part I of those regulations relating to footpaths, bridleways and similar

matters and the Local Choice functions allocated to the Regulatory Committee in Section 4 of this Part.

**The Regulatory Sub-Committee**

3.6.2.3 The Regulatory Sub-Committee will be responsible for determining individual applications for licensable activities under the Licensing Act 2003 and the Gambling Act 2005 and will comply in all respects with the statutory provisions in that regard.

3.6.2.4 The Regulatory Sub-Committee will carry out such other functions as the Regulatory Committee delegates to it in accordance with this section of the Functions Scheme.

**The Regulatory framework**

3.6.2.5 The Regulatory Committee shall discharge its functions having regard to the overall constitutional regulatory framework within which the following bodies are responsible for discharging the following functions:

<b>Body</b>	<b>Responsible for:</b>
The Council	The approval of the Council’s budget and policy framework The allocation of Local Choice functions and functions set out in the Schedule to the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001 The approval of licensing policy pursuant to the Licensing Act 2003
The Cabinet (or Cabinet Member)	To set the overall strategic and policy framework for the discharge of regulatory functions
Scrutiny Committee(s)	To undertake overview and scrutiny in relation to the Cabinet and Cabinet member’s regulatory functions
The Regulatory Committee	To oversee the discharge of regulatory functions by officers To hear appeals against officer or officer panel decisions and revoke any licence To consider and approve detailed regulatory policies and/or procedures
The Regulatory Sub-committee	To determine applications under the Licensing Act 2003 and the Gambling Act 2005 To determine appeals and deal with revocation of licenses in accordance with any delegation of those function by the Regulatory Committee
The Officer Review Panel	To review any decision taken by an officer or officers and to ensure consistency of decision making in relation to the discharge of any regulatory functions
The Chief Executive (or any officer to whom the Chief Executive or any Director has delegated authority)	To fulfil all day to day operational regulatory activities To manage the discharge of regulatory functions To take all regulatory decisions except those specifically reserved to the Regulatory Committee or Regulatory Sub-Committee To establish a Regulatory Review panel of officers to review regulatory officer decisions.

***That the additional paragraph 3.8.2 (e) be added to Section 8 of the Functions scheme as shown below***

## Section 8 - Officer Functions

- 3.8.1 Except as set out in this Functions Scheme, the Chief Executive will exercise all functions on behalf of the Council.
- 3.8.2 Those functions are:
- a Council Functions as set out in Section 2 of the Functions Scheme which will be exercised in consultation with the Council
  - b Cabinet functions that are not reserved for Cabinet or individual Cabinet Member decision as set out in Section 3 of the Functions Scheme which will be exercised in consultation with the Leader of the Council or the relevant Cabinet Member
  - c Local Choice Functions as set out in Section 4 of the Functions Scheme which will be exercised in consultation with either the Cabinet or the Council depending on whether the Council has designated those functions as Council or Cabinet functions. Where such functions are designated Council functions but have been delegated to another Council body, the Chief Executive will exercise his delegated functions in consultation with that body
  - d other functions (other than overview and scrutiny functions) not specifically reserved to another Council body in Section 6 of the Functions Scheme
  - e the carrying out of all regulatory functions other than those specified as being the responsibility of the Regulatory Committee within Section 6 of the Functions scheme
  - f the proper functions of the Head of Paid Service including any formal statutory functions pursuant to that role including determining the management structure of the Council. That structure is included in Part 7 of this Constitution
  - g the functions of Electoral Registration Officer and Returning Officer which he/she undertakes independently of the Council
  - h leadership and effective management of all Council staff.
- 3.8.3 The Monitoring Officer and Chief Finance Officer will fulfil their respective statutory functions.
- 3.8.4 The Chief Executive (as Head of Paid Service), the Monitoring Officer and the Chief Finance Officer will work together constructively but will maintain their discrete roles as necessary to enable them to fulfil their statutory functions.
- 3.8.5 The Chief Executive may arrange for another officer of the Council to carry out any of the officer functions delegated to the Chief Executive.

- 3.8.6 For the purpose of carrying out any of these functions on behalf of the Chief Executive, the members of the Joint Management Team and other senior officers who are employed by NHS Herefordshire (the Primary Care Trust) are hereby appointed by the Council as officers of the Council to enable them to fulfil functions delegated to them by the Chief Executive.
- 3.8.7 Any officer of the Council who has been authorised by the Chief Executive to carry out any of the Chief Executive's functions of the Council may delegate those functions to other officers. In most cases, it is not appropriate for those delegations to be given to any officer below the level of Head of Service or Service Manager in the organisation structure.
- 3.8.8 The Chief Executive will maintain a Chief Executive's Scheme of Delegation detailing all relevant delegations, including the delegation of any proper officer functions (see Section 9 of the Functions Scheme).
- 3.8.9 The Chief Executive's Scheme of Delegation will be regularly reviewed and updated to ensure that it contains all relevant delegations.
- 3.8.10 The Chief Executive's Scheme of Delegation will be published as part of the Council's Freedom of Information Publication Scheme and will be presented to the Council, the Cabinet and the Overview and Scrutiny Committee annually for information.





**REGULATORY COMMITTEE**  
**LICENSING APPEAL PROCEDURE**

1. Introduction by Legal Advisor to the Committee.
2. Licensing Officer outlines the case.
3. Applicant (or his solicitor) sets out his case.
4. Questions asked by the Committee or Licensing Officer or Applicant.
5. Applicant (or his solicitor) asked if he would like to make further comment or representation, or if he requires time to comment or investigate (if so, Chairman defers application).
6. In dealing with each application, the applicant (and any representative) should also withdraw should be asked to withdraw when they have finished their presentation. All officers, other than the Legal Adviser to the Committee, should also withdraw. It would be preferable for the applicant and officers to await the decision at different locations.
7. If either the applicant or the officer are needed to furnish additional information, they should all be invited back before the Committee. When the additional information has been furnished, they should all be asked to leave again.
8. The Committee can then reach a decision in the usual way, but in the absence of parties.
9. The applicant and officers will then be invited to return. The Chairman will announce the decision. The Chairman should also say that the decision will be communicated in writing in due course, and that the applicant will be informed of any right of appeal (if the decision is one of refusal).
10. When the first applicant is finished, that applicant should leave. Deal with the second and subsequent applications in the same way.



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