

AGENDA

Regulatory Sub Committee

Date: **Tuesday 13 December 2011**

Time: **1.00 pm**

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

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

For any further information please contact:

Ricky Clarke, Democratic Services Officer

Tel: 01432 261885

Email: rclarke@herefordshire.gov.uk

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

Agenda for the Meeting of the Regulatory Sub Committee

Membership

Councillor BA Durkin
Councillor JW Hope MBE
Councillor Brig P Jones CBE

GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS

What is a personal interest?

You have a personal interest in a matter if that matter affects the well-being or financial position of you, your relatives or people with whom you have a close personal association more than it would affect the majority of other people in the ward(s) to which the matter relates.

A personal interest can affect you, your relatives or people with whom you have a close personal association positively or negatively. If you or they would stand to lose by the decision, you should also declare it.

You also have a personal interest in a matter if it relates to any interests, which you must register.

What do I need to do if I have a personal interest?

You must declare it when you get to the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you. You may still speak and vote unless it is a prejudicial interest.

If a matter affects a body to which you have been appointed by the authority, or a body exercising functions of a public nature, you only need declare the interest if you are going to speak on the matter.

What is a prejudicial interest?

You have a prejudicial interest in a matter if;

- a) a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgment of the public interest; and
- b) the matter affects your financial interests or relates to a licensing or regulatory matter; and
- c) the interest does not fall within one of the exempt categories at paragraph 10(2)(c) of the Code of Conduct.

What do I need to do if I have a prejudicial interest?

If you have a prejudicial interest you must withdraw from the meeting. However, under paragraph 12(2) of the Code of Conduct, if members of the public are allowed to make representations, give evidence or answer questions about that matter, you may also make representations as if you were a member of the public. However, you must withdraw from the meeting once you have made your representations and before any debate starts.

AGENDA

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1. ELECTION OF CHAIRMAN To elect a Chairman for the hearing.	
2. APOLOGIES FOR ABSENCE To receive apologies for absence.	
3. NAMED SUBSTITUTES (IF ANY) To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
4. DECLARATIONS OF INTEREST To receive any declarations of interest by Members in respect of items on the Agenda.	
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The Public's Rights to Information and Attendance at Meetings

YOU HAVE A RIGHT TO: -

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.

Public Transport Links

- Public transport access can be gained to Brockington via the service runs approximately every 20 minutes from the City bus station at the Tesco store in Bewell Street (next to the roundabout junction of Blueschool Street / Victoria Street / Edgar Street).
- The nearest bus stop to Brockington is located in Vineyard Road near to its junction with Old Eign Hill. The return journey can be made from the same bus stop.

HEREFORDSHIRE COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

FIRE AND EMERGENCY EVACUATION PROCEDURE

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

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

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

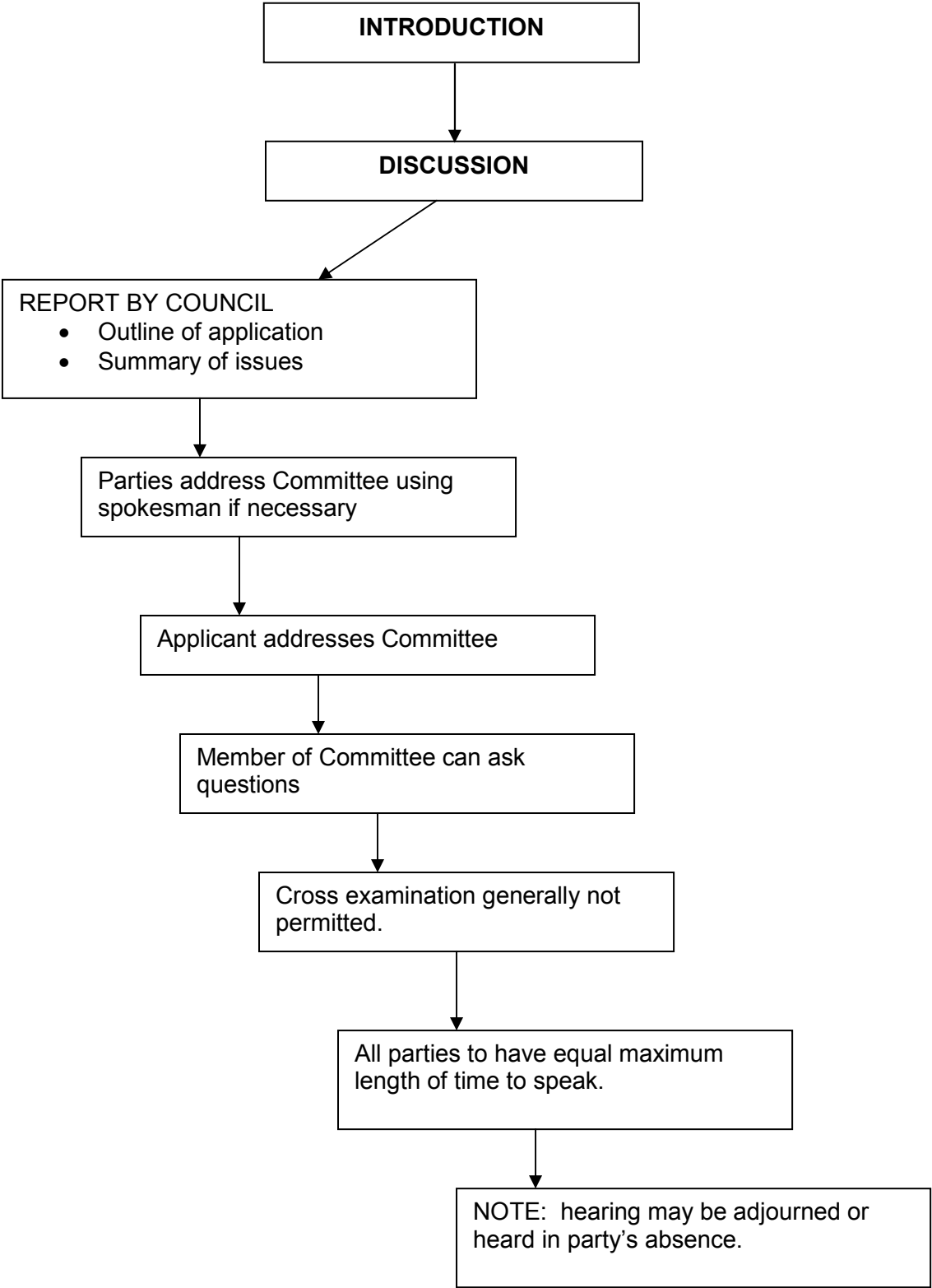
Please do not allow any items of clothing, etc. to obstruct any of the exits.

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



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LICENCING HEARING FLOW CHART



MEETING:	REGULATORY SUB COMMITTEE
DATE:	13 DECEMBER 2011
TITLE OF REPORT:	FOOTPATH EA6 (PART) EASTNOR PUBLIC PATH DIVERSION ORDER 2011
PORTFOLIO AREA:	PLACE BASED COMMISSIONING

CLASSIFICATION: Open

Wards Affected

Ledbury

Purpose

To consider an application under the Highways Act 1989 Section 119, to make a Public Path Diversion Order to divert part of footpath EA6 in the Parish of Eastnor.

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 D338/129-6

Key Points Summary

- The landowner, Eastnor Castle Estates Co., applied for the diversion of part of footpath EA6, in the Parish of Eastnor, in July 2000.
- The reason for proposing the diversion is that the existing footpath is obstructed by pheasant rearing sheds.
- The proposed diversion is not significantly longer than the existing route.
- Pre-order consultation and negotiations have been carried out and the proposal has general support.

Alternative Options

- 1 Under Section 119 of the Highways Act 1980, the Council has the power to make diversion

Further information on the subject of this report is available from
Chris Chillingworth, Rights of Way Officer, on 01432 842100

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. However, as the proposal allows for unobstructed access and has general support this could be considered unreasonable.

Reasons for Recommendations

- 2 The Public Path Order should be made because it is felt that it meets the criteria set out in Section 119 of the Highways Act 1980 and the Herefordshire Council's Public Path Order Policy.

Introduction and Background

- 3 This report is being considered by the Regulatory Sub Committee because it has the delegated authority to make or not to make an Order.

Key Considerations

- 4 Eastnor Castle Estates Co. applied for a diversion on 12th July 2000. The reason given for making an application was to move the footpath away from pheasant rearing sheds.
- 5 Pre-Order consultation was not carried out until December 2010 mainly because of lack of resources available at the time the application was made.
- 6 The proposal has general agreement and support; all potential objections have, we believe, been overcome through negotiation. However, the Byways and Bridleways Trust representative has commented on the possibility that bridleway rights may exist over the path to be diverted. These alleged rights are unproven but if subsequently found to exist would be unaffected by this diversion order resulting in the existence of two rights of way over the land- the original route as a bridleway and the new route as a footpath. The landowner has been made aware of this potential problem but wishes to proceed with the application as it stands.
- 7 The applicant has agreed to pay for administration and advertising costs and the cost of bringing the diverted footpath into operation.
- 8 The Local Members, Councillors P J Watts and E P J Harvey, have raised no objections to the application.
- 9 The proposed diversion meets the specified criteria set out in Section 119 of the Highways Act 1980, and in particular that:
- 10 The proposal benefits the owner of the land
- 11 The proposal is not substantially less convenient to the public.
- 12 It would be expedient to proceed with the proposal given the effect it will have on public enjoyment of the path.

Community Impact

- 13 The Parish Council and local user groups have been consulted as part of the process and the proposal has general agreement and support. Councillors PJ Watts and EPJ Harvey have been consulted and have not objected to the proposal.

Financial Implications

- 14 The applicant has agreed to pay the Council's administration costs in respect of making a diversion Order, to pay associated advertising costs, and to meet the costs of bringing the diverted footpath into operation.

Legal Implications

- 15 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

- 16 Should an Order be made to divert part of footpath EA6, as recommended within this report, there is a risk that the Order will receive objections and would then require referral to the Secretary of State which could increase the demands on officer time and resources. However, extensive informal consultations and negotiations have taken place to minimise the risk of such objections.

Consultees

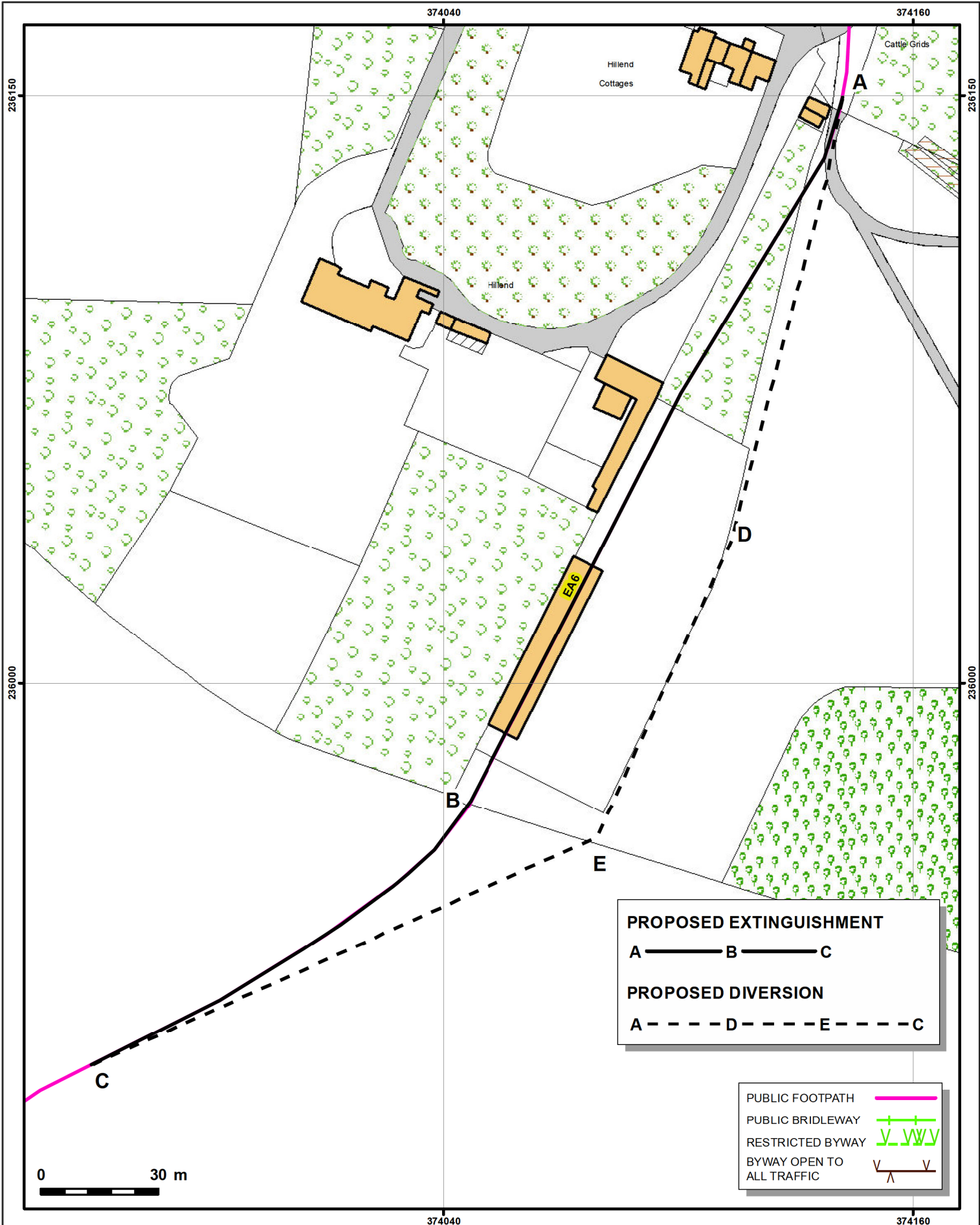
- 17 Prescribed organisations as per Defra Rights of Way Circular 1/09.
Local Members Councillors PJ Watts and EPJ Harvey.
Eastnor Parish Council
Statutory Undertakers.

Appendices

- 18 Drawing number D338/129-6.

Background Papers

- 19 None identified.



**HIGHWAYS ACT 1980, SECTION 119
 HEREFORDSHIRE COUNCIL-FOOTPATH EA6 (PART)
 PARISH OF EASTNOR
 PUBLIC PATH DIVERSION ORDER 2011**

**DWG No.: D338/129-6
 SCALE 1: 1,250 @ A4**

Amey Herefordshire
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 Rotherwas Industrial Estate
 Hereford HR2 6JT
 Tel.: (01432) 845 900

Email: ameyherefordshire@amey.co.uk

MEETING:	REGULATORY SUB COMMITTEE
DATE:	13 DECEMBER 2011
TITLE OF REPORT:	THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL FOOTPATH BE15 (PART) BRILLEY PUBLIC PATH DIVERSION ORDER 2011
PORTFOLIO AREA:	PLACE BASED COMMISIONING

CLASSIFICATION: Open

Wards Affected

Castle

Purpose

To consider an application under Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath BE15 in the parish of Brilley.

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: D404/58-15

Key Points Summary

- After purchasing the affected land the applicants applied for this diversion in July 2009. After moving to the property the landowners became aware that the route of the footpath being walked on the ground is not the route shown on the current definitive map.
- The landowners have since converted outbuildings into 3 separate dwellings and would have ideally liked to have diverted the path as part of these works under the Town & Country Planning Act. The works carried out which affected the legal route of the path (i.e fencing and landscaping) were not deemed as “being necessary to enable the development to take place” the test to be met under the Town & Country Planning Act, hence this application for a Highways Act diversion order.
- The proposed diversion route is the one which walkers have been using for a number of years on a permissive basis. The current legal route contains 4 stiles whilst the proposed route contains 2 pedestrian gates and no stiles. The proposed route is therefore more convenient to path users of all abilities.

- Pre-order consultation and negotiations have resulted in there being no outstanding objections to the proposal

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.

Reasons for Recommendations

- 2 The Public Path Order should be made because it is felt that it meets the criteria set out in Section 119 of the Highways Act 1980 and Herefordshire Council's Public Path Order Policy.

Introduction and Background

- 3 This report is being considered by the Regulatory Sub Committee because it has the delegated authority to make a decision whether or not to make an order.

Key Considerations

- 4 The landowners made an application on 28th July 2009. The reason for making the application was to officially divert the footpath to the route which has been walked on the ground for a number of years.
- 5 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's standard charge applicable at the time of application (£800 in 2009) for making the diversion order.
- 6 The local member, Councillor J W Hope has raised no objections to this application.
- 7 The proposed diversion meets the specified criteria as set out in Section 119 of the Highways Act 1980, and in particular that:
 - The proposal benefits the owner of the land
 - The proposal is not substantially less convenient to the public
 - It would be expedient to proceed with the proposal given the effect it will have on public enjoyment of the paths. Works have been carried out by the landowner following suggestions made by the Ramblers Association and Open Spaces Society in order to improve access for all along the route.

Community Impact

- 8 The Parish Council and local user groups have been consulted as part of the process and the proposal has general agreement and support. Councillor J W Hope has been consulted and has not objected to the proposal.

Financial Implications

- 9 The applicant has agreed to pay the Council's standard fee for the making of a diversion order and to pay associated advertising costs. The applicant will be charged the rate applicable in 2009 (£800). The applicant has also agreed to meet the cost of bringing the paths into operation.

Legal Implications

- 10 Under section 119 of the Highways Act 1980 the Council has the power to make a diversion order. It does not have a duty to do so.

Risk Management

- 11 If an order is made to divert part of public footpath BE15 as recommended with this report, there is a risk that the order will receive objections. This would then require referral to the Secretary of State which could increase the demands on officer time and resources. However, extensive informal consultations and negotiations have taken place in order to minimise the risk of such objections.

Consultees

- 12 Prescribed organisations as per DEFRA Rights of Way Circular 1/09.

Local Member J W Hope

Brilley Parish Council

Statutory undertakers

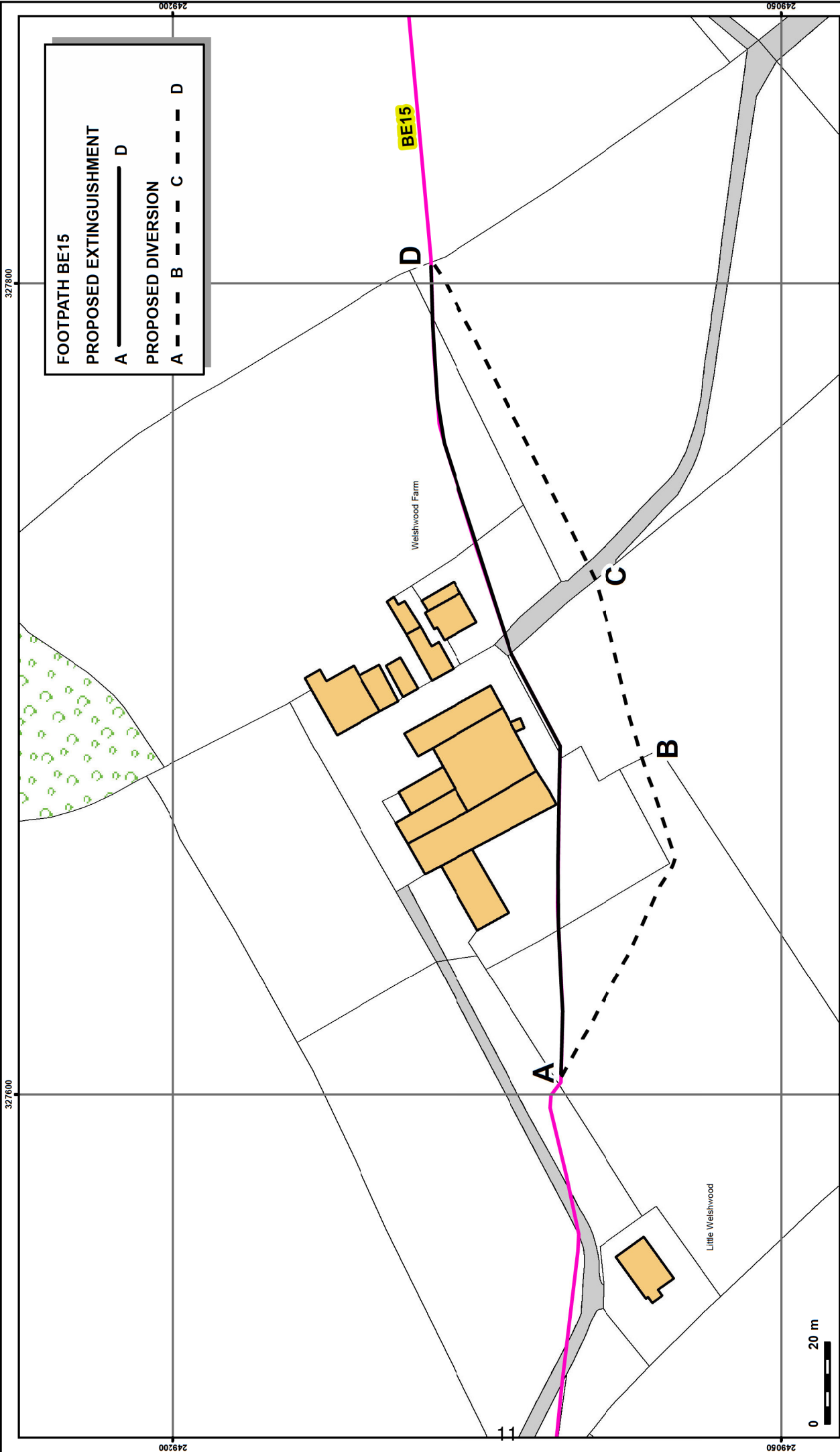
Appendices

- 13 Order plans (number D404/58-15)

Background Papers

- none identified

Further information on this report is available from Vincent Playdon, Public Rights of Way Officer on 01432 842111



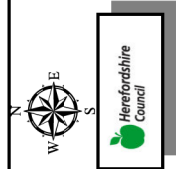
FOOTPATH BE15
PROPOSED EXTINGUISHMENT
 A ——— D
PROPOSED DIVERSION
 A - - - - B - - - - C - - - - D

Amey Herefordshire
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 Tel.: (01432) 845 900
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LEGEND

- PUBLIC FOOTPATH
- PUBLIC BRIDLEWAY
- RESTRICTED BYWAY
- BYWAY OPEN TO ALL TRAFFIC

HIGHWAYS ACT 1980, SECTION 119
HEREFORDSHIRE COUNCIL - PUBLIC FOOTPATH BE15 (PART)
PARISH OF BRILLEY
PUBLIC PATH DIVERSION ORDER 2011
 DWG No.: D404/58-15
 SCALE 1:1,250 @ A4



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MEETING:	REGULATORY SUB-COMMITTEE
DATE:	13 DECEMBER 2011
TITLE OF REPORT:	APPLICATION FOR VARIATION OF A PREMISES LICENCE 'THE HOP POLE, 9 THE SQUARE, BROMYARD, HR7 4BP – LICENSING ACT 2003
PORTFOLIO AREA:	HEALTH & WELLBEING SERVICES

CLASSIFICATION: Open

Wards Affected

Bromyard

Purpose

To consider an application for the variation of a premises licence in respect of 'The Hop Pole, 9 The Square, Bromyard, HR7 4BP'.

Key Decision

This is not a Key Decision.

Recommendation

THAT Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- The steps that are necessary to promote the licensing objectives,
- The representations (including supporting information) presented by all parties,
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003, and
- The Herefordshire Council Licensing Policy.

Key Points Summary

- **One (1)** representation from a member of the public
- **Two (2)** representations from Responsible Authorities (Police & Trading Standards)

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

Options

- 1 a) Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003,
- b) Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it necessary for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
- c) To exclude from the scope of the licence any of the licensable activities to which the application relates,
- d) To refuse to specify a person in the licence as the premise supervisor, or
- e) To reject the application.

Reasons for Recommendations

- 2 Ensures compliance with the Licensing Act 2003.

Introduction and Background

3 Background Information

Applicant	The Hop Pole (Bromyard) Ltd Meridan House, 6 Great Cornbow, Halesowen, B63 3AB	
Representative	N/A	
Type of application: New Application	Date received: 20/10/2011	28 Days consultation 17/11/2011

Licence Application

- 4 The application for a variation of the premises licence has received representation and is brought before the committee for determination.

Current Licence

- 5 The premises is currently licensed as follows: -

Provision of regulated entertainment, A performance of live music (Indoors), Any playing of recorded music (Indoors), Provision of entertainment facilities, Making music (Indoors), Provision of refreshment or alcohol, Sale by retail of alcohol (For consumption both on and off the premises)

All days: 11:00 - 00:00

Non Standard Hours:

Sale of Alcohol: All Bank Holidays to 01- 00 Christmas Eve ,New Years Eve , Easter Saturday to 02.00 St Patricks Day , St Georges Day , Haloween to 01.00

Seasonal variations: None

Summary of Application

6 The application requests that:

An area to the front and rear of the premises should be licensed between the hours of 11 am and 12.30 pm.

Non Standard Timings: None

Seasonal variations: None

Summary of Representations

7 A copy of the representations can be found within the background papers.

8 Representations have been made by:

One (1) member of the public

Two(2) from Responsible Authorities (Trading Standards & **Police who have objected to the application**)

Key Considerations

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

10 The area to be licensed is covered by 'The Herefordshire (Alcohol Consumption in Designated Public Places) Order (No. 4) 2006 which covers the Bromyard area and specifies Market Square and Rowberry Street. The map attached to the order clearly shows the area surrounding the Hop Pole.

11 If a premises licence was to be issued to cover the area applied for then the 'Alcohol Free Zone' would in effect be suspended during the hours covered by the premises licence and for a period of 30 minutes thereafter.

Community Impact

12 The granting of the licence as applied for may have an impact on the Community.

Legal Implications

13 The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

14 The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6

May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

In this case it was summed up that: -

15 A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

16 Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.

17 This judgement is further supported in the case of *The Queen on the Application of Bristol Council v Bristol Magistrates' Court*, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.

In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

18 Schedule 5 gives a right of appeal to: -

Rejection of applications relating to premises licences

1 Where a licensing authority—

- (a) rejects an application for a premises licence under section 18,
 - (b) rejects (in whole or in part) an application to vary a premises licence under section 35,
 - (c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
 - (d) rejects an application to transfer a premises licence under section 44,
- the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc.

2(1) This paragraph applies where a licensing authority grants a premises licence under section 18.

(2) The holder of the licence may appeal against any decision—

(a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or

(b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

(3) Where a person who made relevant representations in relation to the application desires to contend—

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision.

(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 18(6).

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

Consultees

- 20 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
- 21 A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.
- 22 The notice of application was displayed on the premises prior to the start of the consultation period and for a period of 28 days. In addition, notice of the application was required to be published in a newspaper which was circulated within the vicinity of the premises.
- 23 The applicant has produced a copy of the advertisement which is correct.

Appendices

- 24
- a. Application Form
 - b. Public Representation
 - c. Police Representation
 - d. Trading Standards Representation
 - e. The Herefordshire (Alcohol Consumption in Designated Public Places) Order (No. 4) 2006

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.

RECEIVED

20 OCT 2011

Application to vary a premises licence under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

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

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

I/We The Hop Pole (Bromyard) Ltd
(Insert name(s) of applicant)

being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below

Premises licence number
PR00574

Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description Hop Pole Hotel Market Square Bromyard Herefordshire HR7 4BP			
Post town	Bromyard	Post code	HR7 4BP

Telephone number at premises (if any)	01885 482 449
Non-domestic rateable value of premises	£7000

Part 2 – Applicant details

Daytime contact telephone number	0121 585 6655		
E-mail address (optional)			
Current postal address if different from premises address	Meriden House, 6 Great Cornbow Halesowen B63 3AB		
Post Town		Postcode	

Part 3 - Variation

Please tick yes

Do you want the proposed variation to have effect as soon as possible?

If not do you want the variation to take effect from

Day		Month		Year	

Please describe briefly the nature of the proposed variation (Please see guidance note 1)
Alteration of the ground floor area that is licensed for the consumption of alcohol to include the front and rear external paved areas where customers congregate to smoke.

A plan showing these areas is included with this pack

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend

Part 4 Operating Schedule

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

Provision of regulated entertainment

Please tick yes

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

Provision of entertainment facilities:

- i) making music (if ticking yes, fill in box I)
- j) dancing (if ticking yes, fill in box J)
- k) entertainment of a similar description to that falling within (i) or (j) (if ticking yes, fill in box K)

Provision of late night refreshment (if ticking yes, fill in box L)

Sale by retail of alcohol (if ticking yes, fill in box M)

In all cases complete boxes N, O and P

A

Plays Standard days and timings (please read guidance note 6)			Will the performance of a play take place <u>indoors or outdoors or both</u> – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 3)	Both	<input type="checkbox"/>
Tue					
Wed			State any seasonal variations for performing plays (please read guidance note 4)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list (please read guidance note 5)		
Sat					
Sun					

B

Films Standard days and timings (please read guidance note 6)			<u>Will the exhibition of films take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)		
Mon					
Tue			<u>State any seasonal variations for the exhibition of films</u> (please read guidance note 4)		
Wed					
Thur			<u>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Fri					
Sat					
Sun					

C

Indoor sporting events Standard days and timings (please read guidance note 6)			<u>Please give further details</u> (please read guidance note 3)
Day	Start	Finish	
Mon			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 4)
Tue			
Wed			
Thur			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 5)
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 6)			Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick (please read guidance note 2)	
			Indoors	<input type="checkbox"/>
			Outdoors	<input type="checkbox"/>
			Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 3)	
Mon				
Tue			State any seasonal variations for boxing or wrestling entertainment (please read guidance note 4)	
Wed				
Thur			Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list (please read guidance note 5)	
Fri				
Sat				
Sun				

E

Live music Standard days and timings (please read guidance note 6)			<u>Will the performance of live music take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)		
Mon					
Tue			<u>State any seasonal variations for the performance of live music</u> (please read guidance note 4)		
Wed					
Thur			<u>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Fri					
Sat					
Sun					

F

Recorded music Standard days and timings (please read guidance note 6)			<u>Will the playing of recorded music take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			<u>Please give further details here</u> (please read guidance note 3)		
Tue					
Wed			<u>State any seasonal variations for the playing of recorded music</u> (please read guidance note 4)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat					
Sun					

G

Performances of dance Standard days and timings (please read guidance note 6)			<u>Will the performance of dance take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	
			Indoors	<input type="checkbox"/>
			Outdoors	<input type="checkbox"/>
			Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)	
Mon				
Tue				
Wed			<u>State any seasonal variations for the performance of dance</u> (please read guidance note 4)	
Thur				
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</u> (please read guidance note 5)	
Sat				
Sun				

H

<p>Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 6)</p>			<p><u>Please give a description of the type of entertainment you will be providing</u></p>		
Day	Start	Finish	<p><u>Will this entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 2)</p>	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			<p><u>Please give further details here</u> (please read guidance note 3)</p>		
Wed					
Thur			<p><u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u> (please read guidance note 4)</p>		
Fri					
Sat			<p><u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u> (please read guidance note 5)</p>		
Sun					

Provision of facilities for making music Standard days and timings (please read guidance note 6)			<u>Please give a description of the facilities for making music you will be providing</u>		
			<u>Will the facilities for making music be indoors or outdoors or both – please tick</u> (please read guidance note 2)		Indoors
			Outdoors	<input type="checkbox"/>	
			Both	<input type="checkbox"/>	
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)		
Mon					
Tue			<u>State any seasonal variations for the provision of facilities for making music</u> (please read guidance note 4)		
Wed					
Thur			<u>Non standard timings. Where you intend to use the premises for provision of facilities for making music at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Fri					
Sat					
Sun					

J

Provision of facilities for dancing Standard days and timings (please read guidance note 6)			Will the facilities for dancing be indoors or outdoors or both – please tick (see guidance note 2)	Indoors <input type="checkbox"/>
				Outdoors <input type="checkbox"/>
				Both <input type="checkbox"/>
			<u>Please give a description of the facilities for dancing you will be providing</u>	
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)	
Mon				
Tue				
Wed				
Thur				
Fri				
Sat				
Sun			<u>State any seasonal variations for providing dancing facilities</u> (please read guidance note 4)	
			<u>Non standard timings. Where you intend to use the premises for the provision of facilities for dancing at different times to those listed in the column on the left, please list</u> (please read guidance note 5)	

K

Provision of facilities for entertainment of a similar description to that falling within i or j Standard days and timings (please read guidance note 6)			<u>Please give a description of the type of entertainment facility you will be providing</u>		
Day	Start	Finish	<u>Will the entertainment facility be indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			<u>Please give further details here</u> (please read guidance note 3)		
Wed					
Thur			<u>State any seasonal variations for the provision of facilities for entertainment of a similar description to that falling within i or j</u> (please read guidance note 4)		
Fri					
Sat			<u>Non standard timings. Where you intend to use the premises for the provision of facilities for entertainment of a similar description to that falling within i or j at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sun					

L

Late night refreshment Standard days and timings (please read guidance note 6)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 3)		
Mon					
Tue			State any seasonal variations for the provision of late night refreshment (please read guidance note 4)		
Wed					
Thur			Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list (please read guidance note 5)		
Fri					
Sat					
Sun					

M

Supply of alcohol Standard days and timings (please read guidance note 6)			Will the supply of alcohol be for consumption (Please tick box) (please read guidance note 7)	On the premises	<input type="checkbox"/>
				Off the premises	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			State any seasonal variations for the supply of alcohol (please read guidance note 4)		
Tue					
Wed					
Thur			Non-standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 5)		
Fri					
Sat					
Sun					

N

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 8)

O

Hours premises are open to the public Standard days and timings (please read guidance note 6)			State any seasonal variations (please read guidance note 4)
Day	Start	Finish	
Mon			
Tue			
Wed			
Thur			
Fri			
Sat			
Sun			

Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 5)

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking

Please tick yes

- I have enclosed the premises licence
- I have enclosed the relevant part of the premises licence

If you have not ticked one of these boxes please fill in reasons for not including the licence, or part of it, below

Reasons why I have failed to enclose the premises licence or relevant part of premises licence

P Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General – all four licensing objectives (b,c,d,e) (please read guidance note 9)

Signs will be erected on both the front and rear of the premises stating that alcohol can only be consumed within the designated area.

b) The prevention of crime and disorder

On Friday and Saturday evening, we employ a person to patrol the exterior of the premises between 9pm and 12.30am, to check that customers will be consuming alcohol only within the confines of the external area that we are seeking to license.

c) Public safety

Only plastic drinking glasses will be permitted to carry alcohol off the premises.

d) The prevention of public nuisance

Signs will be erected warning customers to keep noise to a minimum, and the patrolling member of staff, will also urge customers to keep the noise down.

e) The protection of children from harm


We will continue to enforce our standard policy of not allowing children on the premises after 9pm and this will include the proposed external licensed areas.

- Please tick yes
- I have made or enclosed payment of the fee
 - I have sent copies of this application and the plan to responsible authorities and others where applicable
 - I understand that I must now advertise my application
 - I have enclosed the premises licence or relevant part of it or explanation
 - I understand that if I do not comply with the above requirements my application will be rejected

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

Part 5 – Signatures (please read guidance note 10)

Signature of applicant (the current premises licence holder) or applicant's solicitor or other duly authorised agent (please read guidance note 11). If signing on behalf of the applicant please state in what capacity.

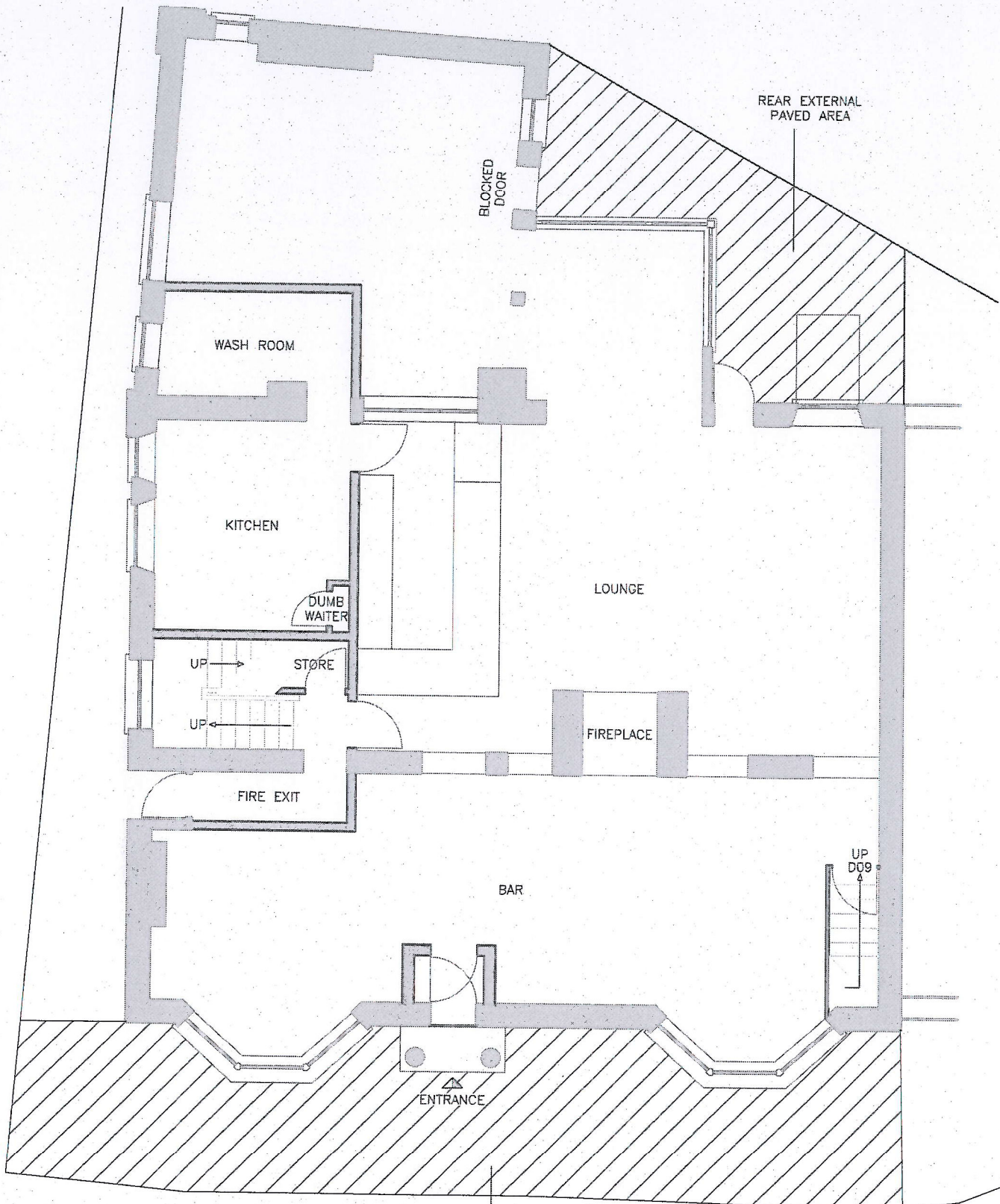
Signature	
Date	18/10/2011
Capacity	DIRECTOR OF THE HOP POLE (BROMYARD) LTD

Where the premises licence is jointly held signature of 2nd applicant (the current premises licence holder) or 2nd applicant's solicitor or other authorised agent (please read guidance note 12). If signing on behalf of the applicant please state in what capacity.

Signature	
Date	
Capacity	

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 13)

Post town		Post code	
Telephone number (if any)			
If you would prefer us to correspond with you by e-mail your e-mail address (optional)			



GROUND FLOOR PLAN
(EXISTING)

FRONT EXTERNAL
PAVED AREA

EH & TS / LICENSING SECTION
RECEIVED
20 OCT 2011
TO:

COURTYARD DESIGN LTD

Hollywall Farm
Stoke Prior
Leominster
Herefordshire
HR6 0NF

Tel: 01568 760540
Fax: 01568 760532
Email: enquiries@courtyarddesigns.co.uk

Project address

HOP POLE HOTEL
THE SQUARE
BROMYARD
HEREFORDSHIRE, HR7 4BP

Drawing Title

Liquor licence variation plan

Scale(s)

1:50 @ A4

Date

02/08/2011

Drawing No.

RS002 HOP POLE

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

THE CRIMINAL JUSTICE AND POLICE ACT 2001

**THE HEREFORDSHIRE (ALCOHOL CONSUMPTION IN DESIGNATED PUBLIC PLACES) ORDER
(NO. 4) 2006**

The County of Herefordshire District Council (in this Order called "the Council") in the exercise of the powers conferred on it by section 13 of the Criminal Justice and Police Act 2001 ("the Act") hereby makes the following Order:

1. The places described in the Schedule below and as delineated in red on the attached plans for the purposes of reference only, being public places in the area of the Council as defined by section 16 (1) of the Act, are hereby designated for the purposes of sections 12 and 13 of the Act.
2. This Order may be cited as "The Herefordshire (Alcohol Consumption in Designated Public Places) Order (No.4) 2006" and shall come into force at midnight on 5th May 2006.

SCHEDULE

Belmont and Newton Farm

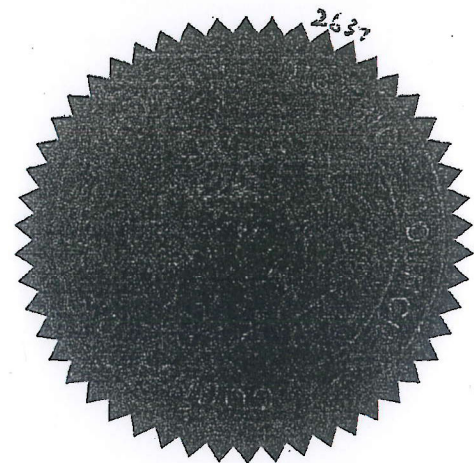
Public open space (inc. Ball Court) to the west of Waterfield Road and south of Kestrel Road, Belmont
Public open space (inc. Skateboard Park) to the east of Brampton Road, to the west of the dismantled railway line and south of Ethelstan Crescent, Newton Farm
Public open space to the north of Luard Walk and south of the River Wye, Hunderton
Eastholme Centre, Eastholme Road, Belmont (i.e. areas adjacent to and around the library, health centre and community centre including the car park)
Public open space at Northolme Road, Belmont (to include the Building, tarmacadamed areas adjacent to the building, children's play area and land between the Building and the play area as defined on the attached plan)
Hereford
Churchill Gardens, Aylestone, Hereford (in its entirety)
Recreation ground off Grandstand Road, Bobblestock (i.e. those areas comprising the football pitch, car park, play area, changing rooms, bowling green and areas between these parts)
Peterchurch
Recreation Field (inc. its car park), Peterchurch
Peterchurch Churchyard, Peterchurch
Church Road (aka Station Road), Peterchurch

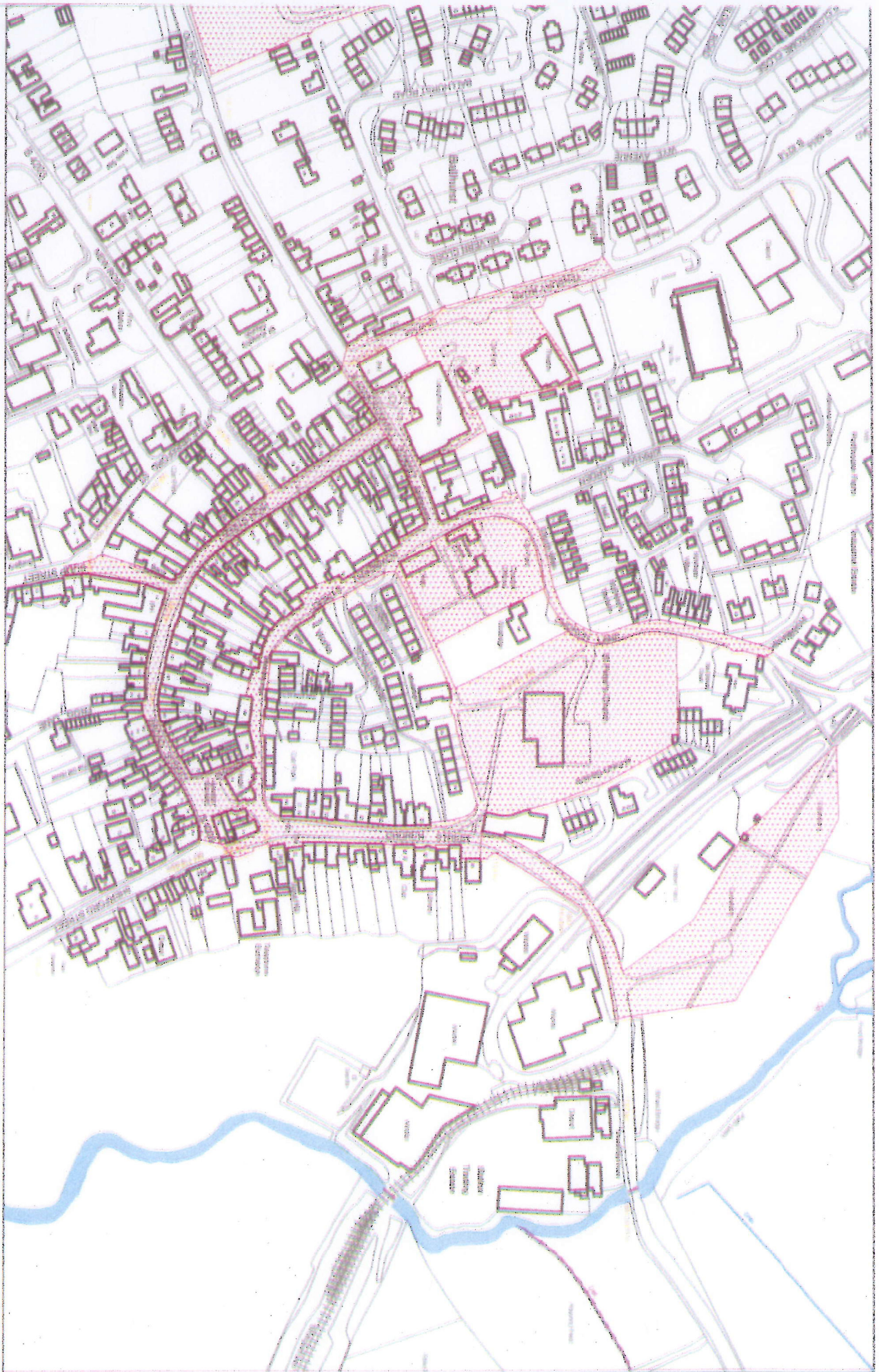
<p>Bromyard Broad Street Bromyard Cemetery Church Lane (to the entrance to Old School Court) Church Street (to its jct. With Porthouse Industrial Estate) Cruxwell Street High Street Tenbury Road (to its jct. With Firs Lane) Tenbury Road car park Alleyway adj. to Library Market Square Pump Street (to its jct. With Little Hereford Street) Queens Passageway Land within the curtilage of Bromyard Leisure Centre Council Offices Kempson Players (formerly the The Knapp Recreation Ground/Playing Fields) St Peter's Closed Churchyard Nunwell Park Bowling Green and Tennis Courts, Rowberry Street Rowberry Street</p>
--

Dated this 5th Day of May 2006

THE COMMON SEAL OF
THE COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL was hereunto
affixed BY ORDER

[Handwritten Signature]
.....Authorised Officer





The Herefordshire (Alcohol Consumption in Designated Public Places) Order (No.4) 2006
Plan No.9c Bromyard Town

Approved by the Council on 12th December 2006. The Council is responsible for the implementation of the Order. The Council is responsible for the implementation of the Order. The Council is responsible for the implementation of the Order.

Scale 1:3000

For further information contact:
 The Council
 Bromyard Town Hall
 Bromyard, Herefordshire
 Herefordshire, Hereford, Herefordshire
 HR23 7JG
 Tel: 01432 200100
 Email: info@bromyardtownhall.gov.uk

Poole, Ady

From: Russell Stevens [rws1966@hotmail.co.uk]
Sent: 19 October 2011 12:57
To: Hough, David
Cc: Licensing; James Brinton ; Andrew Jackson
Subject: Re: Application to vary the Premise License for the Hop Pole under The Licensing Act 2003

Dear Mr Hough

Thank you for your email regarding The Hop Pole in Bromyard I agree to the conditions that you have proposed Regards Russell Stevens Sent from my BlackBerry® wireless device

-----Original Message-----

From: Hough David <dthough@herefordshire.gov.uk>
Date: Wed, 19 Oct 2011 11:08:05
To: <rws1966@hotmail.co.uk>
Subject: FW: Application to vary the Premise License for the Hop Pole under The Licensing Act 2003

From: Hough, David
Sent: 03 October 2011 11:45
To: 'rws1966@hotmail.co.uk'
Subject: Application to vary the Premise License for the Hop Pole under The Licensing Act 2003

FAO. Mr Russell Stevens

As an authorised body under the Licensing Act 2003, Herefordshire Council Environmental Health and Trading Standards have received details of your application to vary the premise licence for The Hop Pole Hotel, Market Square Bromyard HR7 4BP

Trading Standards has the responsibility for enforcing the Licensing Act 2003 in respect of sales of alcohol to anyone under the age of eighteen.

After looking at your application under the section protection of children from harm you state the steps you would take to prevent the sale of alcohol to a person under the age of eighteen would be 'We will continue to enforce our standard policy of not allowing children on the premises after 9pm and this will include the proposed external licensed areas'. As a Service we need to ensure that steps are taken to prevent alcohol to children/person under the age of eighteen therefore the following conditions are suggested to be included in the licence.

1. All staff engaged in the sale of alcohol to be trained in Responsible alcohol retailing to the minimum standard of BIIAB level 1 or any equivalent training agreed by Herefordshire Council Trading Standards within 1 month of commencing employment at the premises. (Where there are existing staff this training shall be completed within 3 months of the date that this condition first appears on the licence). Training records shall be kept on the premises and produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer of Herefordshire Council on demand

2. A written register of refusals will be kept including a description of the people who have been unable to provide required Identification to prove their age. Such records shall be kept for a period of 12 months and will be collected on a daily basis by the Designated Premises Supervisor and produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer of Herefordshire Council on demand.

3. The premises shall operate a Challenge 25 Policy. Such policy shall be written down and kept at the premises. The policy shall be produced on demand of the Police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an

authorised Trading Standards Officer of Herefordshire Council. Prominent, clear and legible signage (in not less than 32 font bold) shall also be displayed at all entrances to the premises as well as at, at least one location behind any bar advertising the scheme operated.

If you agree to these conditions could you email me stating you agree and copy the email to licensing@herefordshire.gov.uk Or If you wish to discuss this matter further please do not hesitate in contacting me

Regards

David Hough
David Hough
Principal Trading Standards Officer
Environmental Health and Trading Standards Peoples' Services Directorate Health and Well Being Services Herefordshire Council PO Box 233 Hereford
HR1 2ZF

Tel No. 01432 260011

Email. dthough@herefordshire.gov.uk

GCSX. dthough@herefordshire.gcsx.gov.uk

Council's Homepage www.herefordshire.gov.uk

<blocked::<http://www.herefordshire.gov.uk/>>

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SMOKING - It won't kill you to stop, but it probably will if you don't... For free help and advice on quitting, call our smoking team on 01432 383567 Email address stopsmoking@herefordshire.gov.uk <blocked::mailto:stopsmoking@herefordshire.gov.uk> or stopsmoking@herefordpct.nhs.uk <blocked::mailto:stopsmoking@herefordpct.nhs.uk> to

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Territorial Policing Unit – Herefordshire
Hereford Police Licensing Department
Hereford Police Station
Bath Street
Hereford. HR1 2HT



0300 333 3000 ext 4702

Direct Dial: 01432 347102

e-mail herefordandworcesterlicensing@westmercia.pnn.police.uk

Your Ref:

18 October 2011

Our Ref:

Herefordshire District Council
Licensing Department
PO Box 233
Council Offices
Bath Street
HEREFORD HR1 2ZF

Dear Sir/Madam

REF: Hop Pole Hotel, Market Square, Bromyard

I refer to the above application made pursuant of the Licensing Act 2003.

This application is to vary the premises licence to create areas to the front and rear of the premises for the licensable activity of the consumption of alcohol.

West Mercia Police object to this application on the grounds to allow this variation to the premises licence would impact on the licensing objectives and in particular that of the prevention of crime and disorder and the prevention of public nuisance.

You will also be aware that the area requested to be licensed is subject to a Herefordshire Council street drinking restriction order. This order is in place as a result of a significant consultation process.

This premises is located at a small market town, its location is such that it is in a prominent position in an area known as the Market Square. There are no external licensed areas at the premises and its location is surrounded by roads, and a mixture of residential and commercial premises.

The premises have been subject to a wide range of complaints of nuisance and disorder in or near its location. These complaints also include issues of non compliance of the premises licence through the provision of alcohol and the undertaking of regulated entertainment after licensed hours.

NOT PROTECTIVELY MARKED

www.westmercia.police.uk Non-emergency: 0300 333 3000
Policing Herefordshire, Shropshire, Telford & Wrekin and Worcestershire



INVESTOR IN PEOPLE

Previously the premises have been subject to a review application (2009) due to the level of issues that were being reported. This application was granted and additional conditions were applied to the premises licence. At the time of this application the premises was under the management and control of a brewery and the current owner and designated premises supervisor was not involved in the premises.

Since September 2010 a total of 17 reports have been made to West Mercia Police with regards to non compliance of licence conditions (that is a crime matter) and crime, disorder and public nuisance.

The majority of these incidents and complaints have occurred late at night and at weekends. A large amount of the incidents have occurred at the front of the premises – which is part of the application to be licensed.

The view of the local residents is that the premises is impacting on their quality of life due to the level of disorder and nuisance that is occurring, there is however a reluctance to put this in writing as they are fearful of reprisals as it is likely due to the numbers involved, they would be identified. Police reassurance patrol is still being provided in the vicinity of the premises at weekends. However the nature of policing in this area is that in the event of reports being received, attendance will be from other parts of the county if reported after midnight.

West Mercia Police are of a view that to allow this variation application would undermine the licensing objectives due to the level of reported issues, the lack of management and control of the premises by both the premises licence holder and the designated premises supervisor, and lastly a potential that crime through disorder and public nuisance would occur.

Yours faithfully

J MOONEY
Police Licensing Officer

NOT PROTECTIVELY MARKED

RECEIVED

27 OCT 2011

**HEREFORDSHIRE COUNCIL
Licensing Act 2003**

**REPRESENTATION FORM – INTERESTED
PARTIES**

Please return this form, and any additional information within the statutory period to:
**The Licensing Section,
County Offices,
PO Box 233,
Bath Street, Hereford,
HR1 2ZF
licensing@herefordshire.gov.uk**

On making your representation please have regard to the 'Making Representations Guidance Notes' which further explains the process and the information that can be considered by the licensing authority.

When completing this form please print clearly and legibly.

Your Name: [REDACTED]	Contact Telephone No. [REDACTED]
Address: [REDACTED] Bromyard Herefordshire HR7 4BP	E-mail address: [REDACTED]
	Please state your interest in the premises you are making a representation about: Resident
Name & Address of premises you are making a representation about: The Hop Pole, Market Square, Bromyard, Herefordshire	

DATA PROTECTION ACT 1998. Please indicate by ticking here if you are not content for your personal details to be circulated as necessary prior to any hearing .

A representation must reflect one or more of the licensing objectives, therefore please write the details of your representation in the relevant boxes below:

To Prevent Crime & Disorder
Public Safety My comments apply
To Prevent Public Nuisance I reside directly opposite to the Hop Pole and on several occasions the pavement is thronged with customers smoking and drinking and creating a lot of noise well past 10pm. On one occasion in the Summer a 'stag party' overflowing onto the pavement caused a noise nuisance well past 3am. If this rowdy behaviour is to be permitted on a public footpath then it should be limited to finish before 9pm.

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	13 DECEMBER 2011
TITLE OF REPORT:	REVIEW OF PREMISES LICENCE: MCCOLLS, 7 THE OVAL, HEREFORD. HR2 7HG – LICENSING ACT 2003
PORTFOLIO AREA:	HEALTH AND WELLBEING

CLASSIFICATION: Open

Wards Affected

Belmont

Purpose

To consider an application for a review of the premises licence relating to 'McColls, 7 The Oval, Hereford, HR2 7HG' called by Herefordshire Council Trading Standards.

Key Decision

This is not a Key Decision.

Recommendation

THAT Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- The steps that are necessary to promote the licensing objectives,
- The representations (including supporting information) presented by all parties,
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003, and
- The Herefordshire Council Licensing Policy.

Key Points Summary

- 3rd Review of Premises Licence
- Called following a further underage sale.
- One representation received from a responsible authority.
- One representation received from interested parties.

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

Options

1 Take no action or

Take any of the following steps: -

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

Reasons for Recommendations

2 Ensures compliance with the Licensing Act 2003.

Introduction and Background

3 Background Information

Applicant	Herefordshire Council – Trading Standards	
Premise Licence Holder	Martin McColl Ltd, Martin McColl House, Ashwells Road, Brentwood, Essex, CM15 9ST	
Solicitor	DWF, Liverpool	
Type of application: Review	Date received: 21/10/11	28 Days consultation 18/11/11

4 Current Licence

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

Sale by retail of alcohol (off sales):

On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.

On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.

On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.

On Good Friday, 8 a.m. to 10.30 p.m.

5 **Previous Review**

This licence was first reviewed by the Regulatory Sub-Committee on 4th November 2008.

The grounds for that review were: -

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

The decision of that Committee was: -

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

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

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

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

The premises licence was further reviewed on 10th August 2009.

The grounds for that review were:

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

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

On that occasion the Committee attached the following condition:

- Two members of staff must endorse each sale of alcohol by signature.

No appeal was lodged with the Magistrates Court in respect of either decision.

6 **Summary of Application**

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

- Prevention of Public Nuisance
- Protection of Children from harm

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

The premises is a general store situated on the outskirts of Hereford.

The request for this review is based on the licensing objectives regarding the prevention of crime and disorder and the protection of children from harm.

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

At 1900 hours on Saturday 15th October 2011 Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

One(1) 16 year old female, who was 5' 2" tall was sold alcohol (Eight [8] Cans of Blackthorn Cider 4.7% strength) without being challenged concerning her age.

The seller was a personal licence holder who made no challenge regarding the females age.

After the sale when challenged the seller stated that he thought she was over 25.

Herefordshire Council Licensing Policy states that any premises failing a test purchase will be reviewed.

The premises has been the subject of 2 further reviews following test purchases in the past.

On 4th November 2008 the Licensing Committee imposed the following conditions:

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

On 10th August 2009 the Licensing Committee imposed the following condition:

- Two members of staff must endorse each sale of alcohol by signature.

They also suspended the licence for a period of 7 days commencing at 0001 on Tuesday 1 September 2009.

At the time of the operation there were numerous notices displayed within the premises advertising that they operated a 'Challenge 30' policy.

The condition imposed on 10th August 2009 that 'Two members of staff must endorse each sale of alcohol by signature' did not take place.

9 **Further Information**

On 8th November officers from Herefordshire Council went to the store where a further test purchase operation was carried out. On this occasion a 23 year old purchased four cans of 'Strongbow Cider. Again no challenge was made regarding his age and again two members of staff did not sign the sale off.

The training records were asked for and whilst records were being kept there was no evidence of the training which had been received by staff.

This incident is now the subject of a criminal investigation.

10 **Summary of Representations**

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

11 **Responsible Authorities**

A representation has been received from the West Mercia Police.

12 **Interested Parties**

One (1) representation has been received from a ward councillor.

Key Considerations

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

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

- 11.26 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - **for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;**
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;
 - for the organisation of racist activity or the promotion of racist attacks;
 - for unlawful gaming and gambling; and
 - for the sale of smuggled tobacco and alcohol.
- 11.27 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. **Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.** We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

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

In this case it was summed up that: -

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

Community Impact

- 14 It is felt that any decision made will have a minimal impact on the Community.

Legal Implications

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

Consultees

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

Appendices

- 20
- a. Application Form for Review
 - b. Police Representation
 - c. Interested party representation

Background Papers

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

NOTES

REVIEWS

11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.22 'A number of reviews may arise in connection with crime that is not directly connected with licensable activities'. 'Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all'. 'Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them'.

11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

Section 52 (11) A determination under this section does not have effect—

- (a) until the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, until the appeal is disposed of.

Licensing Authority's power to exercise substantive discretionary powers.

**The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3)
The British Institute of Inn keeping V Canterbury City Council.**

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; the scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant, who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.

21 OCT 2011

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

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

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

We Herefordshire Council Trading Standards

(Insert name of applicant)

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

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description McColls The Oval	
Post town Hereford	Post code (if known) HR2 7HG
Name of premises licence holder or club holding club premises certificate (if known) Martin McColl Ltd	
Number of premises licence or club premises certificate (if known) PR00388	

Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

- a) a person living in the vicinity of the premises
- b) a body representing persons living in the vicinity of the premises
- c) a person involved in business in the vicinity of the premises

- d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates (please complete (A) below)

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

Please tick

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

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

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

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address David Hough Herefordshire Council Trading Standards Council Offices Bath Street Hereford
Telephone number (if any) 01432 260011
E-mail address (optional)

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

Please tick one or more boxes

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

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

The premises is a general store situated on the outskirts of Hereford.

The request for this review is based on the licensing objectives regarding the prevention of crime and disorder and the protection of children from harm.

The premise has been the subject the subject of a test purchase operation which it failed.

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

At 1900 hours on Saturday 15th October 2011 Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

One(1) 16 year old female, who was 5' 2" tall was sold alcohol (Eight [8] Cans of Blackthorn Cider 4.7% strength) without being challenged concerning her age.

The seller was a personal licence holder who made no challenge regarding the females age.

After the sale when challenged the seller stated that he thought she was over 25.

Herefordshire Council Licensing Policy states that any premises failing a test purchase will be reviewed.

The premises has been the subject of 2 further reviews following test purchases in the past.

On 4th November 2008 the Licensing Committee imposed the following conditions:

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

On 10th August 2009 the Licensing Committee imposed the following condition:

- Two members of staff must endorse each sale of alcohol by signature.

They also suspended the licence for a period of 7 days commencing at 0001 on Tuesday 1 September 2009.

At the time of the operation there were numerous notices displayed within the premises advertising that they operated a 'Challenge 30' policy.

The condition imposed on 10th August 2009 that 'Two members of staff must endorse each sale of alcohol by signature' did not take place.

Please tick yes

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

If yes please state the date of that application

Day Month Year

--	--	--	--	--	--	--	--	--	--

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

Area for providing details of representations made before relating to the premises, including the date and nature of the representations.

Please tick yes

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

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

Part 3 – Signatures (please read guidance note 3)

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

Signature 

Date 20th October 2011

Capacity Trading Standards Officer

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

Notes for Guidance

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

Poole, Ady

From: Mooney, James [james.mooney@westmercia.pnn.police.uk]
Sent: 15 November 2011 08:46
To: Licensing
Cc: Spriggs, Fred; Hough, David
Subject: McColls, The Oval Hereford

NOT PROTECTIVELY MARKED

West Mercia Police have been made aware of a review application regarding **McColls, The Oval, Hereford**. This application was submitted by Herefordshire Trading Standards as a result of a under age test purchase operation failure on 15 October 2011. In addition West Mercia Police are aware of a further test purchase failure on 09 November 2011, where a sale was made to a person under the age of 25, therefore breaching the conditions attached to the premises licence.

West Mercia Police are aware that this premises were subject to previous test purchase failures in 2008 and 2009, which resulted in a similar review application and ended with additional conditions applied to the premises licence in order to address the licensing objectives of the prevent of crime and disorder and the protection of children from harm.

West Mercia Police are of the opinion that the premises licence holder - if applicable - and/or the person who undertook the sale of alcohol should be subject to a criminal prosecution for the offences disclosed. This prosecution is to be lead by the responsible authority who submitted the review application.

West Mercia Police are also of the opinion that the premises licence should be revoked by the Licensing Authority due to the seriousness of the matters subject of this review and the previous failures that have occurred.

However if the process of revoking the premises licence is not accepted or pursued, West Mercia Police are of a view that the premises should be subject to more stringent licence conditions. Therefore West Mercia Police submit the following representations which are in our opinion necessary, proportionate, achievable and enforceable in order to promote the licensing objectives.

1. A **Personal licence Holder shall be on duty** within the licensed area of the premises at all times when the premises operate for the sale

of alcohol.

2. **All sales of alcohol must be authorised** by a personal licence holder and must be witnessed by another member of staff of at least 18 years of age. This member of staff should be trained as indicated at point '3' below

3. **All staff engaged in the sale of alcohol to be trained in Responsible Alcohol Retailing** to the minimum standard of BIIAB level 1 or any other training recognised and agreed with Trading Standards. (All existing staff shall be trained within two weeks of the date that this condition appears on this licence. All new staff shall be trained within two weeks of taking up employment. All staff shall be re-trained six monthly thereafter. Training records shall be kept on the premises which shall show the name of the training course attended, the date of the training, the name of the person undertaking

the training and shall be produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) on demand.

4. The premises shall operate a **Challenge 30 Policy**. Such policy shall be written down and kept at the premises. The policy shall be

produced on demand by an authorised person' (as defined by Section 13 of the Licensing Act 2003) or police. Prominent, clear and legible

signage (in not less than 32 font bold) shall also be displayed at all entrances to the premises as well as at, at least one location behind any area

advertising the scheme operated.

Whilst this is a Herefordshire Trading Standards lead review application, West Mercia Police totally support the review application submitted and

are of an opinion that the view stated in this submission and the representations made are necessary to promote the licensing objectives.

Regards

Jim Mooney
Police Licensing Officer - South Hub
Territorial Policing Unit - Herefordshire
West Mercia Police
01432 347102 (direct line)
07792 366 462 (work)
herefordandworcesterlicensing@westmercia.pnn.police.uk

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This communication is confidential and intended for the addressee(s) only.

Please notify the sender if received in error.

Unauthorised use or disclosure of the content may be unlawful.

Opinions expressed in this document may not be official policy.

Thank you for your co-operation.

West Mercia Police 0300 333 3000

Poole, Ady

From: Poole, Ady
Sent: 11 November 2011 11:49
To: Edwards, Philip (Cllr)
Subject: RE: Belmont Ward Member Response

Hi Cllr Edwards

We have evidence of the failure to comply with the required condition.

Your evidence will support that in relation to witnessing that failure.

Your representation will be accepted and you will be notified of the Committee Hearing date in due course.

Thank you

Ady

Adrienne Poole
 Licensing Assistant,
 Environmental Health & Trading Standards,
 People's Services Directorate - Health & Wellbeing Service,
 Herefordshire Council, Bath Street Offices, Bath Street,
 Hereford.

HR1 2ZF

Tel: 01432 260105

Fax: 01432 383142

email: apoole@herefordshire.gov.uk

Council's Homepage www.herefordshire.gov.uk

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From: Edwards, Philip (Cllr)
Sent: 11 November 2011 09:55
To: Poole, Ady
Subject: RE: Belmont Ward Member Response

Ady,

I have no specific evidence apart from McColls being located right in the middle of Belmont Ward so have to rely on the General Statements made other than that I have noted that the outlet is often managed by one person so have some difficulty in understanding how McColls can comply with the 'two signature rule' as set out in Mr Spriggs response.

Cllr Phil Edwards
 Belmont Ward
 Herefordshire Council

From: Poole, Ady
Sent: 11 November 2011 09:42
To: Edwards, Philip (Cllr)
Subject: RE: Belmont Ward Member Response

Dear Councillor Edwards

I have spoken with Mr Spriggs regarding your response to the Review of the premises licence for McColls, The Oval and he has asked me to contact you.

He has to consider whether a representation is a 'relevant representation in that is it about the likely effect of the grant of the premises licence on the promotion of the licensing objectives'.

The statements you have made are quite general.

A recent High Court case requires that any representation must be supported by some real evidence and that that evidence relates to the premises in question.

Do you have any information or evidence that the occurrences you describe are attributable or connected to McColls in particular which can be added to your representations to ensure that they can be accepted as relevant?

Thank you

Ady

Adrienne Poole

Licensing Assistant,
Environmental Health & Trading Standards,
People's Services Directorate - Health & Wellbeing Service,
Herefordshire Council, Bath Street Offices, Bath Street,
Hereford.

HR1 2ZF

Tel: 01432 260105

Fax: 01432 383142

email: apoole@herefordshire.gov.uk

Council's Homepage www.herefordshire.gov.uk

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Save paper - please only print out this message if you really need to.

From: Spriggs, Fred
Sent: 11 November 2011 09:21
To: Poole, Ady
Subject: FW: Belmont Ward Member Response

From: Edwards, Philip (Cllr)
Sent: 10 November 2011 23:33
To: Spriggs, Fred
Cc: Bridges, Adrian (Cllr); Powell, Glenda (Cllr); belmontrural@yahoo.co.uk; clerk@herefordcitycouncil.gov.uk
Subject: Belmont Ward Member Response

Dear Mr Spriggs,

Please find my Belmont Ward Response comments to the Licence Review taking place regards McColls Outlet at the Oval, Belmont.

Thank you for taking the time to call & explain why this review is being undertaken & supplying a copy documenting relevant information.

Regards Phil

*Cllr Phil Edwards
Belmont Ward
Herefordshire Council*

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From: [Name] (C) [Email]
Sent: 10/10/2011 10:11 AM
To: [Name]
Subject: [Subject]

Dear [Name],
Please find my report on the [Subject] regarding [Subject].
Thank you for taking the time to call & explain why the review is being undertaken & providing a copy of the relevant information.

Respectfully,
[Name]
[Title]
[Organization]
Any opinion expressed in this e-mail or any attached files are those of the individual and not necessarily those of [Organization].
This e-mail and any attached files are confidential and intended solely for the use of the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. If you have received this e-mail by mistake please notify the sender immediately and delete all copies of it. Please consider the environment before printing this e-mail.

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	13 DECEMBER 2011
TITLE OF REPORT:	REVIEW OF A PREMISE LICENCE 'STOKES STORES, 4 HOARWITHY ROAD, PUTSON, HEREFORD. HR2 6HA'. – LICENSING ACT 2003
PORTFOLIO AREA:	HEALTH & WELLBEING SERVICES

CLASSIFICATION: Open

Wards Affected

St Martins & Hinton

Purpose

To consider an application for a review of a premises licence in respect of Stokes Stores, 4 Hoarwithy Road, Putson, Hereford, HR2 6HA called by Herefordshire Council Trading Standards.

Key Decision

This is not a Key Decision.

Recommendation

THAT Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- The steps that are necessary to promote the licensing objectives,
- The representations (including supporting information) presented by all parties,
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003, and
- The Herefordshire Council Licensing Policy.

Key Points Summary

- 2nd Review of Premises Licence
- Called following a further underage sale.
- One representation received from a responsible authority.

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

Options

1 Take no action or

Take any of the following steps: -

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

Reasons for Recommendations

2 Ensures compliance with the Licensing Act 2003.

Introduction and Background

3 Background Information

Applicant	Herefordshire Council – Trading Standards	
Premise Licence Holder	Mrs Christine Ann Merrett, 20 Thompson Place, Whitecross, Hereford. HR4 0JP.	
Representative	Inn Confidence	
Type of application: Review	Date received: 21/10/11	28 Days consultation 18/11/11

4 Current Licence

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

Sale by retail of alcohol (off sales):

On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.

On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.

On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.

On Good Friday, 8 a.m. to 10.30 p.m.

5 **Previous Review**

This licence was previously reviewed by the Regulatory Sub-Committee on 4th November 2008.

The grounds for that review were: -

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

The decision of that Committee was: -

That the License be suspended in respect of all licensable activity for a period of 24 hours.

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

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

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

- That the use of 'Challenge 21' is made a condition of all sales made on the premises.
- Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and trading standards officers.

6 **Summary of Application**

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

- Prevention of Crime & Disorder
- Protection of Children from harm

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

The premises is a general store situated on the outskirts of Hereford.

The request for this review is based on the licensing objectives regarding the prevention of crime and disorder and the protection of children from harm.

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

On the evening of Saturday 15th October 2011 Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

One (1) 16 year old female, who was 5' 2" tall was sold alcohol (2 litre bottle of Woodpecker) without being challenged concerning her age.

At the time the female store assistant requested ID, but was told by another member of staff that this was not needed as the person was over 21. The person who said this was a personal licence holder.

Herefordshire Council Licensing Policy states that any premises failing a test purchase will be reviewed.

The premises has been the subject of a further review following a failed test purchase in the past.

On 4th November 2008 the Licensing Committee imposed the following conditions:

- Personal licence holder to be on site at all times during sales of alcohol.
- That the use of 'Challenge 21' is made a condition of all sales made on the premises.
- Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment.

Evidence of training to be retained in writing and to be available for inspection by any authorised person and trading standards officers.

They also suspended the licence for a period of 24 hours.

At the time of the operation there were notices displayed within the premises advertising that they operated a 'Challenge 25' policy and the 2 members of staff present were wearing 'No ID No Sale' badges.

9 **Summary of Representations**

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

10 **Responsible Authorities**

A representation has been received from the West Mercia Police.

Key Considerations

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

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

- 11.26 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - **for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;**
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;
 - for the organisation of racist activity or the promotion of racist attacks;
 - for unlawful gaming and gambling; and
 - for the sale of smuggled tobacco and alcohol.

- 11.27 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. **Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.** We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

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

In this case it was summed up that: -

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

Community Impact

13 It is felt that any decision made will have a minimal impact on the Community.

Legal Implications

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

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

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

Consultees

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

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

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

Appendices

- 20 a. Application Form for Review
- b. Police Representation

Background Papers

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

NOTES - REVIEWS

11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.22 'A number of reviews may arise in connection with crime that is not directly connected with licensable activities'. 'Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all'. 'Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them'.

11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

Section 52 (11) A determination under this section does not have effect—

- (a) until the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, until the appeal is disposed of.

Licensing Authority's power to exercise substantive discretionary powers.

The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; the scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant, who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.

**Application for the review of a premises licence or club premises certificate
under the Licensing Act 2003****PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

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

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

We **Herefordshire Council Trading Standards**

(Insert name of applicant)

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

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description	
Stokes Stores 4 Hoarwithy Road Putson	
Post town Hereford	Post code (if known) HR2 6HA

Name of premises licence holder or club holding club premises certificate (if known)
Mrs Christine Ann Merrett

Number of premises licence or club premises certificate (if known)
PR00430

Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

a) a person living in the vicinity of the premises

b) a body representing persons living in the vicinity of the premises

c) a person involved in business in the vicinity of the premises

- d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates (please complete (A) below)

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

Please tick

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

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

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

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address

David Hough
Herefordshire Council Trading Standards
Council Offices
Bath Street
Hereford

Telephone number (if any)

01432 260011

E-mail address (optional)

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

Please tick one or more boxes

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

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

The premises is a general store situated on the outskirts of Hereford.

The request for this review is based on the licensing objectives regarding the prevention of crime and disorder and the protection of children from harm.

The premise has been the subject the subject of a test purchase operation which it failed.

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

On the evening of Saturday 15th October 2011 Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

One (1) 16 year old female, who was 5' 2" tall was sold alcohol (2 litre bottle of Woodpecker) without being challenged concerning her age.

At the time the female store assistant requested ID, but was told by another member of staff that this was not needed as the person was over 21. The person who said this was a personal licence holder.

Herefordshire Council Licensing Policy states that any premises failing a test purchase will be reviewed.

The premises has been the subject of further reviews following a failed test purchase in the past.

On 4th November 2008 the Licensing Committee imposed the following conditions:

- Personal licence holder to be on site at all times during sales of alcohol.
- That the use of 'Challenge 21' is made a condition of all sales made on the premises.
- Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and trading standards officers.

They also suspended the licence for a period of 24 hours.

At the time of the operation there were notices displayed within the premises advertising that they operated a 'Challenge 25' policy and the 2 members of staff present were wearing 'No ID No Sale' badges.

Please tick yes

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

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

Part 3 – Signatures (please read guidance note 3)

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

Signature 

Date 20th October 2011

Capacity Trading Standards Officer

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

Notes for Guidance

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

Poole, Ady

From: Mooney, James [james.mooney@westmercia.pnn.police.uk]
Sent: 14 November 2011 14:58
To: Licensing
Cc: Spriggs, Fred; Hough, David
Subject: Stokes Store, Hoarwithy Road, Hereford.

NOT PROTECTIVELY MARKED

West Mercia Police have been made aware of a review application regarding **Stokes Store, Hoarwithy Road, Hereford**. This application was submitted by Herefordshire Trading Standards as a result of a under age test purchase operation failure on 15 October 2011.

West Mercia Police are aware that this premises were subject to previous test purchase failures in 2008, which resulted in a similar review application and ended with a 24 hour closure of the premises and additional conditions applied to the premises licence in order to address the licensing objectives of the prevent of crime and disorder and the protection of children from harm.

West Mercia Police are of the opinion that the premises licence holder - if applicable - and/or the person who undertook the sale of alcohol should be subject to a criminal prosecution for the offences disclosed. This prosecution is to be lead by the responsible authority who submitted the review application.

In addition West Mercia Police are of a view that the premises should be subject to more stringent licence conditions. Therefore West Mercia Police submit the following representations which are in our opinion necessary, proportionate, achievable and enforceable in order to promote the licensing objectives.

1. A **Personal licence Holder shall be on duty** within the licensed area of the premises at all times when the premises operate for the sale

of alcohol.

2. **All sales of alcohol must be authorised by a personal licence holder and must be witnessed by another member of staff.** This member of staff should be trained as indicated at point '3' below

3. **All staff engaged in the sale of alcohol to be trained in Responsible Alcohol Retailing** to the minimum standard of BIIAB level 1 or any other training recognised and agreed with Trading Standards. (All existing staff shall be trained within two weeks of the date that this condition appears on this licence. All new staff shall be trained within two weeks of taking up employed. All staff shall be re-trained six monthly thereafter. Training records shall be kept on the premises which shall show the name of the training course attended, the date of the training, the name of the person undertaking the training and shall be produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) on demand.

4. The premises shall operate a **Challenge 25 Policy**. Such policy shall be written down and kept at the premises. The policy shall be

produced on demand of an authorised person' (as defined by Section 13 of the

Licensing Act 2003) or the police. Prominent, clear and legible

signage (in not less than 32 font bold) shall also be displayed at all entrances to the premises as well as at, at least one location behind any area

advertising the scheme operated.

Whilst this is a Herefordshire Trading Standards lead review application, West Mercia Police totally support the review application submitted and

are of a view that the view stated in this submission and the representations made are necessary to promote the licensing objectives.

Regards

Jim Mooney
Police Licensing Officer - South Hub
Territorial Policing Unit - Herefordshire
West Mercia Police
01432 347102 (direct line)
07792 366 462 (work)
herefordandworcesterlicensing@westmercia.pnn.police.uk

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Please notify the sender if received in error.

Unauthorised use or disclosure of the content may be unlawful.

Opinions expressed in this document may not be official policy.

Thank you for your co-operation.

West Mercia Police 0300 333 3000