

REPORT OF THE REGULATORY COMMITTEE

Meetings Held on 20 November 2007, 18 December 2007
and 29 January 2008

Membership:

Councillors: P Jones CBE (Chairman), JW Hope MBE (Vice-Chairman) CM Bartrum, DJ Benjamin, ME Cooper, PGH Cutter, Mrs SPA Daniels, JHR Goodwin, R Mills, A Seldon, DC Taylor.

HIGHWAYS ACT 1980 SECTION 119 – APPLICATIONS FOR PUBLIC PATH DIVERSION ORDERS

1. The Committee has determined applications for the following Public Path Diversion Orders for which there has been consultation with interested parties, the local parish councils and the local Ward Councillors where appropriate:-
 - (a) SP19 (part) and SP20 (part) in the parish of Stoke Prior – approved and;
 - (b) HN6 in the parish of Hentland - approved.

AMENDMENT AND ADDITION OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS

2. Complaints have been received from the trade about the way in which some proprietors have breached the Council's hackney carriage and private hire vehicle licensing conditions in the following ways:-
 - (a) Operators are purchasing Wheel Chair accessible vehicles which are under five years of age. They are then replacing these vehicles with much older vehicles very soon after. The original vehicle is then being sold or used again to purchase another plate;
 - (b) there used to be a condition where any replacement vehicle had to be the same or higher standard both in age and vehicle type, this was removed following the consultation at the recommendation of the Licensing Steering Group; which felt that it was too restrictive. The Licensing Section agreed to do this but advised the Group that if the system was abused the condition would need to be reconsidered; and
 - (c) wheelchair accessible vehicles are being tested with a full capacity of eight seats, which means that the rear row of seats have to be removed to accommodate a wheelchair. Only wheelchair accessible vehicles, which are under 5 years of age, can get a new hackney carriage plate. The increase in numbers was made to provide a better service to disabled users. Many of these vehicles are not being used with disabled access, but are being used predominantly for larger groups of passengers, mainly for migrant farm workers based around the County. This has an impact on the rest of the trade who have a reduced number of seats to maintain the wheelchair accessibility. It gives an unfair advantage to those who have retained the seats to have more passengers, and reduces the service for those with wheelchairs. The newer vehicles are being replaced in some cases with significantly older and poorer conditions vehicles, which reduce the quality of the fleet. It is clear from government guidance that older vehicles tend to be more polluting than newer ones, and this has been proven by air quality modelling undertaken for

the Council. Therefore, as many taxis and private hire vehicles frequent the air quality management areas in Hereford City, Bargates in Leominster and the A40 near Ross-on-Wye it is essential to encourage less polluting vehicles.

3. The Committee has agreed to revised licensing conditions to overcome the problems which have been encountered. It was also noted that needs assessment survey work will be undertaken in due course to assess the public demand for wheelchair accessible vehicles. This will enable the Council to determine the provision of vehicles which will be needed to comply with the requirements of the 1995 Disability Discrimination Act when the relevant provisions come into force in Herefordshire.

AMENDMENT TO FEES FOR SPARE AND REPLACEMENT VEHICLE APPLICATIONS

4. The Committee has considered a proposed amendment of licence fees for backup and replacement hackney carriage vehicles. Since the fees were increased in April 2007, it has become evident that some of the fees need adjusting. Complaints have been received from the trade because they were finding that if they needed to keep a backup vehicle or replace a vehicle, the fee was too much of a financial burden, particularly if they had recently renewed the license of the vehicle being replaced. It has been decided that the fees should be reduced so that they still cover the Council's costs but are set at a fairer realistic level. Appropriate refunds will be given to proprietors who have paid the higher price since April 2007.

GUIDANCE POLICY ON CONVICTIONS

5. A policy is being developed for the way in which applications for hackney carriage and private hire licences are dealt with from those who have relevant criminal convictions. As part of the process, applicants must undertake an enhanced Criminal Records Bureau (CRB) check at the time of application and thereafter at least every three years. The guidance has been based upon advice from the Department of Transport and the CRB. There is a right of appeal to the Magistrates Court in the event of an applicant or licensee being aggrieved if the application is refused, or a license suspended or revoked. Previously during the period allowed for an appeal to be lodged, and up to the time the appeal is determined, a licensee had a statutory right to continue working as a taxi driver. The legislation has recently changed so that this right has been removed and a refusal, suspension or revocation will take immediate effect. Guidelines have been prepared for the way in which these issues can be dealt with by the Committee and the Head of Legal and Democratic Services and the Police are helping with the development of a policy.

BRIEFING ON STREET TRADING

6. The Trading Standards Manager and the Licensing Officer (Street Trading) have given a presentation to the Committee about the work of the Council's Street Trading Panel which helps to manage the control of street trading across the County. The Panel meets approximately every six weeks and is comprised of representatives from Trading Standards, Environmental Health, Highways and Transportation, Licensing, Economic Development, Markets and Fairs, and Legal Services. The Hereford City Manager also attends in an ex-officio capacity. A policy is in place for the administration and enforcement of street trading which was not permitted legally to be used a method of raising excess revenue service within Herefordshire. Applications for street trading consents are submitted to the Panel and considered on their individual merits, taking into account a variety of factors including:

existing trader/product supply in the vicinity

precedents already set by the Panel; and

suitability of proposed stall/unit/product range.

HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING - DEVIATION BY DIANA KAY KINSEY FROM VEHICLE LICENCE CONDITION NUMBER 2.1

7. The Committee has agreed to vary a licence condition to grant a vehicle licence in respect of a vehicle which is more than two years old. The applicant uses a mini-bus for airport transfers as part of her holiday business and has been affected by new legislation which brings such a service under the remit of hackney carriage/private hire licensing. The Committee noted that the application was from a well run reputable company with a high standard of vehicle which was only necessitated by a change in legislation. It was agreed that because of the particular circumstances, an exception could be made to the Council's licensing policies and that the application granted.

REVIEW OF LICENSED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES THAT HAVE BEEN MODIFIED: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847

8. It has been brought to her attention of the Licensing Manager that certain vehicles originally manufactured as panel vans had been converted to mini-buses and licensed for hackney carriage/private hire. Outwardly the vehicles look like any other minibus but doubts had been raised about their structural safety, seating anchor points and braking systems. Their registration documents still specified them as panel vans and there were no test certificates to establish that the work had been safely carried out. Advice from the Department of Transport is that the vehicles would need to be tested at one of its inspection centres and obtain the necessary safety certification. The DVLA would also need to be notified about the modifications and the vehicle registration documents altered accordingly. There are also a further 70 purpose-built vehicles which have been modified for wheelchair access which would need to be subject to Department of Transport and DVLA inspection and certification.
9. The Committee has decided that in the case of the converted panel vans, the licences are to be suspended until such time as the Council is provided with confirmation that the vehicles have complied with the requirements of the Department of Transport and the DVLA. In the case of the purpose-built vehicles adapted for wheelchair accessibility, there are not the same urgent safety issues involved and up to two months from the date of the meeting has been allowed for proprietors to comply with the requirements. The Council's vehicle licence conditions have been revised to incorporate all of the necessary requirements in respect of all future applications.

REVIEW OF THE LICENSING POLICY AND CUMULATIVE IMPACT POLICY FOR COMMERCIAL ROAD AREA OF HEREFORD CITY - LICENSING ACT 2003 AND GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003

10. As required by the Licensing Act 2003, the Committee has reviewed its Licensing Policy, and the Cumulative Impact Policy for the Commercial Road area of Hereford which were introduced in early 2005. The Policies relate to the control of alcohol sales and consumption and prevention of associated anti-social behaviour in designated areas. Section 4 of the Act 2003 requires Local Licensing Authorities to promoting the following licensing objectives:-
 - a) the prevention of crime and disorder;
 - b) public safety;

- c) the prevention of public nuisance
- d) the protection of children from harm.

11. Section 5 of the Act 2003 requires Licensing Authorities the Council to redetermine its Policies every three years and to publish a statement of those Policies. Extensive consultation has been carried out with the police, relevant bodies and interested parties. The Police and appropriate organisations are of the view that the cumulative impact Policy for the Commercial Road area of Hereford has proved to be a great success and should continue. It is aimed at regulating the effect that all the licensed and public entertainment premises have on crime and disorder in a concentrated area. It provides a way of controlling the cumulative impact that a number of licensed premises have on an area, rather than dealing with applications on an individual basis in isolation from each other. The Council is part of a Joint Tasking Group, a working group with the Police and other community organisations which helps to develop and administer the policies and reduce crime and disorder. The Committee has endorsed its work and agreed that it should continue and be included within the policies.

RECOMMENDED TO COUNCIL: that the licensing policy and special policy for the Commercial Road area of Hereford as set out in Appendix A to this report, be adopted in respect of the period 2008 – 2011 and that it will also include provision for the Joint Tasking Group on licensing.

SETTING OF FEES IN RESPECT OF TEMPORARY USE NOTICES IN ACCORDANCE WITH REGULATION 7 – THE GAMBLING ACT 2005 (TEMPORARY USE NOTICES) REGULATIONS 2007

12. The Committee has considered a report about fees to be charged for Temporary Use Notices (TUNS) under Part 9 of the Gambling Act 2005. Section 212 of the Act has provision for the Local Licensing Authorities set its own fees subject to them not exceeding the maximum set by the Government at £500. At its meeting on 25th May 2007 Council delegated this function to the Regulatory Committee to deal with. The regulations about TUNS came into force on 1 December 2007 and a TUN may only be granted to a person or company holding an operating licence for gambling which has been granted by the Gambling Commission. The Notices allow the use of premises for gambling, where there is no premises licence, but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. The same premises cannot be subject to a TUN for more than 21 days in any 12 month period, but may have more than one TUN in that period provided the 21 days is not exceed. The Committee has decided to set the fee at £500 initially, on the understanding that it will be reviewed in twelve months time when data will be available enable a review of the costs and fees. This is in line with the approach being used by other Local Licensing Authorities.

APPLICATIONS FOR HACKNEY CARRIAGE AND PRIVATE HIRE LICENCES – LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

13. Six applications for the reinstatement, renewal or grant of Hackney Carriage/Private Hire driver's licences have been referred to the Committee in accordance with the Council's terms and conditions and the advice on the interpretation of spent convictions and medical requirements. The circumstances regarding two licence holders were also considered to determine if there are grounds for them to be suspended. The applicants, licence holders and their representatives gave details of the grounds for their applications and they provided the Committee with the circumstances giving rise to their offences or health situations. The applications were dealt with as follows:

- (a) one licence licence was reinstated because the Committee is satisfied that evidence had been given that the applicant is a fit and proper person to be licensed;
- (b) one application was refused because the applicant is not considered to be a fit and proper person to be granted a licence;
- (c) four applications were granted because the Committee is satisfied that evidence had been given that the applicants are fit and proper persons to be licensed; and
- (d) in the case of two cases referred to the Committee for consideration, it was decided at this stage that there are no grounds for the licenses to be suspended.

**P. JONES CBE
CHAIRMAN
REGULATORY COMMITTEE**

BACKGROUND PAPERS Agenda papers from the meetings of the Regulatory Committee held on 20th November, 2007, 18th December, 2007 and 29th January, 2008.

APPENDIX A

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

LICENSING POLICY 2008-2011

1. Introduction and Overview

- 1.1 The County of Herefordshire District Council (hereinafter “the Council”) is responsible for the licensing of licensable activities within Herefordshire. Licensing is about regulating licensable activities in accordance with the licensing objectives on licensed premises, members clubs and at temporary events within the terms of the Licensing Act 2003 (hereinafter “the Act”). This policy document sets out the policies that the Council will use as guidance when making decisions upon applications made under the act for the following activities:
- a. the sale by retail of alcohol;
 - b. the supply of alcohol by or on behalf of a club to or to the order of a member of the club;
 - c. the provision of regulated entertainment; and
 - d. the provision of late night refreshment.
- 1.2 The Council has issued further guidance notes to support the Policy e.g. guidance for making applications, making reviews e.t.c, which can be found on Herefordshire Councils website www.herefordshire.gov.uk. These do not form part of the Policy but are intended to assist an applicant with the application process.
- 1.3 The Policy takes into account the revised Department of Culture, Media and Sport (DCMS) guidance to Local Authorities, The Violent Crime Reduction Act 2006, Regulatory Reform (Fire Safety) Order 2005, Central Government’s alcohol harm reduction strategy and is consistent with Section 17 of the Crime and Disorder Act 1998 which requires the Local Authority to do all that it reasonably can to prevent crime and disorder within its locality. The policy is consistent with the Human Rights Act 1998, the Environmental Protection Act 1992, the Race Relations Act 1976, the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995 and the Anti-social Behaviour Act 2003. The Licensing Authority will have due regard to other organisation’s policies and strategies which contribute to the four licensing objectives.
- 1.4 The Council has a duty under the Act to exercise its functions with a view to promoting the four licensing objectives, (i.e. all licences, applications and representations will be assessed against the licensing objectives) which are:

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

Without prejudice to other obligations imposed on it, it's the duty of the Authority to exercise it's various functions with due regard to the likely affect of the exercise of those functions on, and the need to do all it reasonably can to prevent crime and disorder.

1.5 This policy is made after consultation with:

- a. The Chief Officer of Police;
- b. The Hereford and Worcester Combined Fire Authority;
- c. Bodies representing local holders of premises licences;
- d. Bodies representing local holders of club premises certificates;
- e. Bodies representing local holders of personal licences; and
- f. Bodies representing bodies business and residents in the Council's locality
- g. The Primary Care Trust
- h. The Health Authority in Herefordshire
- i. The Ambulance Service
- j. The Herefordshire Community Safety Partnership
- k. The Hereford City Partnership
- l. Departments within the Herefordshire Council (e.g. Planning, Environmental Health, Street Trading, Public Health)

1.6 The purpose of this policy document is to assist both Officers and Members in arriving at decisions on particular applications, setting out those matters that will normally be taken into consideration. Additionally, the policy document seeks to provide clarity for applicants, residents and other persons interested in or occupying property to enable them to make plans to move, remain or invest in the communities of Herefordshire with some measure of certainty. Whilst the Council has produced this policy, as the general approach to be taken in considering applications, the Council recognises that each application will always be considered on its individual merits and shall base this decision on the operating Schedule and Risk assessments

provided by the applicant and the consultation with interested parties and responsible authorities.

1.7 The objective of the licensing process is to allow the carrying on of retail sales of alcohol, the provision of regulated entertainment and of late night refreshment in a way that ensures compliance with the licensing objectives. It is the Council's wish to facilitate well-run and well-managed premises with licence holders displaying sensitivity to the impact of their premises on local residents, the community and the four licensing objectives.

2. Cumulative Impact

2.1 The Council will assess the cumulative impact of licensed premises on the promotion of the licensing objectives set out in 1.4. It is important however that this issue is not confused with the perceived "need" for the premises which is a judgement relating to commercial demand for a particular public house, restaurant or similar venture. The issue of "need" is therefore a matter for planning consideration or for market forces to decide and does not form part of the licensing policy statement.

2.2 The Council may refuse individual licenses if representations are received from either a responsible authority or an interested party as defined in the Act. Licenses may also be refused if the cumulative impact of new licenses is leading to an area becoming saturated with premises of a particular type, making it a focal point for large groups of people to gather thus creating exceptional problems of disorder and/or nuisance which outweighs the impact from the individual premises themselves. The Council cannot refuse correctly completed applications that meet legislative requirements. In all such cases the issue of cumulative impact can be taken into account when considering the individual merits of any application. See Annex One – Special Policy. Following representation from the West Mercia Police the Council has established a cumulative impact area covering Commercial Road and parts of Blueschool Street, Commercial Square, Bath Street and Union Street. However it is recognised that premises vary in style and nature and therefore, applications within the defined area will still be considered on their own merits.

2.3 Where representations are made by an interested party or responsible authority the Council will consider, inter alia:

- a. Identifying an area from which problems are arising and the boundaries of that area.
- b. adopting a policy about future applications for premises within that area;
- c. making an assessment of the causes; and
- d. gathering evidence and identifying serious and chronic concern from a responsible authority or local residents about nuisance and disorder.

2.4 Where such representations are made, it shall be for the responsible authority or interested party making those representations to prove any assertion that the licensing of the premises concerned would cause the cumulative impact claimed.

2.5 The Council recognises the fact that licensing is not to be the sole or only means of addressing problems caused by unruly or anti-social behaviour. Other mechanisms include: -

- a. Planning controls;
- b. powers of local authorities to designate areas prohibiting the consumption of alcohol in public places or through existing bylaws;
- c. police powers to close premises or temporary events on grounds of disorder or likelihood of disorder or excessive noise;
- d. the prosecution of personal licence holders who sell alcohol to customers who are drunk;
- e. the powers of the police, local businesses or residents to demand a review of a licence
- f. police enforcement of the law with regard to disorder and anti-social behaviour;
- g. the powers of the Fire Service to close premises or temporary events in the interests of public safety; and
- h. the powers of Environmental Health to close premises as a result of excess noise.
- i. Violent Crime Reduction Act (Drinking Banning Orders, Alcohol Disorder Zones etc)

3. Relationship with the Planning Process

3.1 All premises for which a licence is required must have a suitable authorised use under planning legislation. For example:

- a. "Use for the sale of food and drink for consumption on the premises or of hot food for consumption off the premises" (use Class A3);
- b. Retail shop licensed for the sale of liquor (use Class A1);
- c. A hotel that has a restaurant or bar included in its authorised use (use Class C1).
- d. Dance halls, bingo halls and casinos (use Class D2)

3.2 The Council's planning policies are set out in its Unitary Development Plan. Additionally, Government guidance in the form of planning policy guidance notes (PPG's), planning policy statements (PPS's) and regional planning policy guidance notes (RPG's) are relevant. The Council, as local planning authority, gives considerable weight to these policies in order to ensure consistency in decision-making.

3.3 Planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. This policy also states a commitment to avoid duplication with other regulatory schemes such as Health and Safety at Work.

3.4 There is no legal basis for the Licensing Authority to refuse a licensing application because it does not have planning permission, as these are separate issues. However, applicants need to understand that the permissions are separate and that the grant of one does not automatically guarantee the grant of another. Therefore there may be occasion when premises have been granted a licence under the Licensing Act but not granted planning permission. In this case the requirements of the planning permission would still have to be complied with.

3.5 Arrangements have been made for the Licensing Committee to receive, where appropriate, reports on the needs of the employment situation and local tourist economy for the area to ensure that these are reflected in their considerations.

3.6 The Licensing Committee, where appropriate, will provide regular reports to the Planning Committee on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder. This is to ensure that the Planning Committee is fully informed whilst making decisions.

4. Licensing Hours

4.1 The Council recognises that fixed licensing hours can lead to disturbance and disorder when large numbers of people leave licensed premises at or about the same time. Longer and more flexible licensing hours regarding the sale of alcohol may therefore be considered as an important factor in reducing the possibility of disorder and friction at late night fast food outlets, taxi ranks, bus stops and other areas where incidents of disorder and disturbance have historically occurred. With regard to shops, stores and supermarkets these will be free to provide the sale of alcohol for consumption off the premises only when the retail outlet is open for shopping unless a responsible authority or interested party can show cause why more stringent conditions should be imposed.

4.2 The Council in deciding whether to issue a licence will consider each application on its merit. However stricter conditions are likely to be imposed with regard to noise control in the case of premises situated in predominantly residential areas. The Council does not intend any form of "zoning" to be introduced. Research has shown this can lead to significant migration of people across zonal boundaries in search of premises that remain open for longer hours.

4.3 When considering applications for premises licences, the Council will take into account applicant's requests for terminal hours in the light of:

- a. Environmental quality;
- b. Residential impact and amenity;
- c. The character and nature of a particular area;
- d. The nature of the proposed activities to be provided at the premises.

4.4 The terminal hours will normally be approved where the applicant can show that the proposal would not adversely affect any of the above matters. The Council may set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area and where appropriate representations are made.

5. Licensed Premises and Children

5.1 The Council recognise that there are numerous and diverse premises for which licenses may be sought. Such premises may include cinemas, public houses, nightclubs, takeaway bars, community halls and restaurants. Access by children to all types of the premises will not be limited in any way unless it is considered necessary to do so in order to protect them from physical, moral or psychological harm. Whilst the Council will decide each application on its own individual merits, examples which might give rise to concern would include premises:

- a. Where alcohol sale and/or consumption is the primary or exclusive purpose;
- b. Where there has been a known association with drug taking or drug dealing;
- c. Where there is a strong element of gambling taking place;
- d. Where entertainment is provided of an adult or sexual nature;
- e. Where there have been convictions for the serving of alcohol to persons under the age of 18; and
- f. Where there is a reputation for under age drinking.

5.2 In the case of premises that are used for film exhibitions (such as cinemas) conditions will be imposed restricting access only to those who meet the required age limit in which any certificate granted by the British Board of Film Classification. Where a large number of children are likely to be present on any licensed premises (e.g. for the showing of a film predominantly aimed at children or a pantomime) then conditions may be imposed when considered necessary requiring the presence of an

appropriate number of adult staff to ensure public safety and the protection of children from harm. Suitable options for limiting access by children to licensed premises might include:

- a. A limit on the hours when children may be present;
- b. A limitation or exclusion when certain activities take place;
- c. The requirement to be accompanied by an adult;
- d. Access limited to parts of the premises, but not the whole; and
- e. An age limitation (for under 18).

5.3 The Council will not impose any condition to the effect that children must be admitted to any given premises. Admission, unless otherwise limited, will be at the discretion of those managing the premises.

5.4 The Council commends the Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks that seeks to ensure that drinks are packaged and promoted in a socially responsible manner.

5.5 The Council supports the Herefordshire Proof of Age Standards Scheme and other Proof of Age Standards Scheme (PASS) accredited systems.

5.6 The Council will target premises where they suspect that alcohol is being persistently sold to children (3 underage test purchase sales in a consecutive 6 month period) and will serve a closure notice on the premises in line with the Violent Crime Reduction Act 2006. Where appropriate the suspension of the licence will be sought from the Magistrates Court.

5.7 In accordance with the revised guidance where a review has been requested following the purchase or consumption by minors connected with licensed premises The Council will seriously consider revocation of the licence – even in the first instance.

6. Conditions of Licence

6.1 The Council recognises that it may be necessary for conditions to be imposed on any licence that is tailored to the individual style and characteristics of the premises and events concerned. The compliance of the conditions attached to various licences will be the responsibility of those having control or in accordance with the statutory provisions. Accordingly, these matters will centre on the premises being used for

licensable activities and the vicinity of those premises. The Council does not propose to implement standard conditions on licences uniformly across its area, but instead will draw upon a model pool of conditions issued by the DCMS and any other relevant guidance; attach conditions as appropriate and following appropriate representations in accordance with the circumstances of each individual application. If no representations are made in connection with an application conditions cannot be imposed by the licensing authority that are over and above those tended by the applicant as contained within the operating schedule.

6.2 The Council will primarily focus on the direct impact of the activities taking place in the licenses premises. The model conditions will include, amongst other things, guidance issued surrounding crime and disorder; public safety; cinemas and fire safety; public nuisance and the protection of children from harm.

6.3 The council will take regard not to duplicate statutory requirements within conditions imposed upon a licence.

7. Enforcement

7.1 The Council has already established joint inspections of premises together with the West Mercia Constabulary and the Hereford and Worcester Fire Authority. It is proposed to continue such inspections to ensure the prevention of crime and disorder and the safety of the public. Inspections will take place at the discretion of the Council and its partner agencies and resources will be concentrated on areas perceived as having the greatest need.

7.2 Protocols between the Police, the Fire Service and other licensing enforcement officers (appendix 2) to deal with, amongst other things, enforcement issues, the visiting of licensed premises, and the sharing of information will be developed with West Mercia Police. All enforcement will be in line with the Environmental Health and Trading Standards Enforcement Policy and Enforcement Concordat available on the councils website www.herefordshire.gov.uk.

8 PERSONAL LICENCE

8.1 The Licensing Act 2003 includes a regime for the granting of personal licences to individuals to supply, or to authorise the supply of alcohol. The personal licence is separate from the licence that authorises the premises to be used for the supply of alcohol. The licensing of individuals separately from the licensing of premises permits the movement of personal licence holders from one premise to another, allowing greater flexibility.

8.2 A personal licence does not authorise its holder to supply alcohol anywhere, but only from establishments or events with authorisation to supply alcohol in accordance with the premises licence or the temporary event notice. An individual may hold only one personal licence at any one time.

8.3 To qualify for a personal licence the applicant must fulfil certain criteria. The licensing authority must grant the licence if it appears that:

- a. the applicant is aged 18 or over;
- b. no personal licence held by the applicant has been forfeited within the period of five years before making the application;
- c. the applicant possesses an accredited licensing qualification, or is a person of prescribed description; and
- d. the applicant has not been convicted of any relevant or foreign offence.

8.4 If the applicant fulfils all these criteria, the licence will be granted. If any of the first three criteria are not met, the licensing authority must reject the application. The licensing authority must notify the chief officer of police for its area if it appears that an applicant has been convicted of any relevant or foreign offence. If the police make no objections within a 14-day period, the licence must be granted.

9. Films

9.1 No film shall be exhibited at any licensed premises, which is likely to:

- a. Lead to public disorder, or;
- b. Stir up hatred or incite violence towards any section of the public on grounds of colour, race, ethnicity, or national origin, disability or religious beliefs, sexual orientation or gender.

9.2 If, in the opinion of the Council, a particular film falls into any of the above categories, the Council may rule that it is not to be shown. Advice will be sought from Environmental Health, Trading Standards and/or appropriate organisation representing the interests' of children. When appropriate BBFC guidance will be used.

10. Live Music, Dancing and Theatre

10.1 The Council recognises that in implementing its cultural strategy, proper account shall be taken of the need to encourage and promote live music, dancing and theatre for the cultural benefit of the wider community. Conditions imposed on relevant licences will not discourage the promotion of such entertainment, but will relate solely to the promotion of the licensing objectives.

10.2 The Council will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music and dancing.

10.3 The Council is also mindful of the comments made by the Live Music Forum in respect of Licensing Public Spaces (e.g. public parks, public land) and now that the legislative issue has been resolved intends to licence public spaces within Herefordshire to permit regulated entertainment.

11. Capacity

11.1 The Regulatory Reform (Fire Safety) Order 2005 now places a requirement on the holder of a licence to have in place a fire risk assessment for the premises. In addition to other considerations the capacity of the premises should be included. The Council may impose conditions in relation to the maximum number of persons to attend premises where;

- a. It considers it to be necessary for the prevention of crime and disorder, and;
- b. Promotion of public safety

12. Transport

12.1 The Council will have regard to the policies and strategies as set out in the Local Transport Plan. Reporting arrangements to local authority transport committees will be made so that those committees may have regard to the need to disperse people from town and city centres swiftly and safely to avoid concentrations that produce disorder and disturbance.

13. Complaints and Reviewing Licences

13.1 In every case, the representations to review a licence must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations that do not support or improve the case of the original representation may not be made at the hearing.

13.2 Representations may be made by a responsible authority such as the police or fire authority, or by an interested party such as local residents or businesses or a body or person representing them. .

13.3 Where the request originates with an interested party, the Council will first consider whether the complaint made is not relevant, vexatious, frivolous or repetitious.

(a) A representation is only relevant if it relates to the effect of the licence on the promotion of at least one of the licensing objectives. After a premises licence has been granted a complaint relating to general crime and disorder situations would generally not be considered unless it could be positively tied or linked by a casual connection to a particular premises.

(b) Vexatious bears its ordinary meaning in relation to the representation. The Council will determine, on its merits, whether a representation by an interested party is vexatious.

(c) A frivolous representation is categorised by a lack of seriousness. A trivial complaint may not always be frivolous but it would have to be pertinent in order to be relevant. The Council will determine, on its merits, whether a representation by an interested party is frivolous.

(d) A repetitious representation is one that is identical or substantially similar to a ground for review specified in an earlier application for review, was considered when the premises licence was first applied for, has already been excluded by reason of an issue of a provisional statement or because a reasonable interval has not elapsed since the original application or previous review.

13.4 Reviews will be conducted in accordance with DCMS guidance. Guidance and Application Forms for a Review can be found on the Herefordshire Council Website.

However, in accordance with the spirit of the act, the Council will seek to resolve issues.

13.5 Any person who is aggrieved by a decision made by Herefordshire council may in certain cases have a right to appeal the decision in the Magistrate's Court or if it is a matter of process they may have a right to Judicial Review the decision in the High Court.

14. Applications

14.1 Applications must be submitted in the prescribed manner and meet with the requirements as laid down in the various Licensing Act 2003 Regulations issued by the Secretary of State.

14.2 Herefordshire council will issue guidance on its website www.herefordshire.gov.uk .

15. Fees

15.1 The Council will not accept any application until the appropriate prescribed fee in respect of the same has been paid to the Council.

16. Violent Crime Reduction Act 2006

16.1 The Council is aware that during the period of this policy Drinking Ban Orders and Alcohol Disorder Zones will be introduced through the Violent Crime Reduction Act 2006. However without the regulations to accompany this act it is difficult to fully assess the implications these will have on this policy. Consequently, this policy may be further reviewed once these are introduced.

17. Scheme of Delegated Functions

17.1 Committee Members can elect to go to full Committee at any time.

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a police objection	If no objection made
APPLICATION FOR PERSONAL LICENCE WITH UNSPENT CONVICTIONS		<i>If a police</i>	IF NO OBJECTIONS RECEIVED

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

17. Further Information

For more information regarding licensing contact:

Licensing Section

County Offices

PO Box 233

Bath Street

Hereford

HR1 2ZF

01432 260105

http://www.herefordshire.gov.uk/business/trading_licences/9225.asp

Appendix One

SPECIAL POLICY

1. There is a concentration of licensed premises in the Commercial Road Area of Hereford City which are already causing a cumulative and detrimental impact on the following licensing objectives:
 - The prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance
2. The specific areas made the subject of this special policy are as follows:-
 - The full length of Commercial Road from its junction with Blueschool Street to its junction with Aylestone Hill.
 - 100 metres of Blueschool Street, West from its junction with Commercial Road.
 - 50 metres of Bath Street, East from its junction with Commercial Square.
 - 50 metres of Commercial Street, South from its junction with Commercial Square.
 - 50 metres of Union Street, South from its junction with Commercial Square.
3. The Council has a Special Policy of refusing new licences whenever it receives relevant representations about the cumulative impact that it concludes should lead to refusal.
4. These conclusions will be drawn from an evidential basis. Consideration of the adoption of a Special Policy include:
 - Identification of concern about crime and disorder and public nuisance;
 - Consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area and the boundaries of the area from which the problems are arising; or that risk factors are such that the area is reaching a point where a cumulative impact is imminent.
5. The effect of this is to create a rebuttal presumption that applications for new premises or material variations will normally be refused if relevant representations to that effect are made unless it can be demonstrated that the operation of the premises will not add to the cumulative impact already being experienced. The Special policy does not relieve responsible authorities or interested parties of the need to make a relevant representation.
6. Special Policies will be reviewed regularly to assess if they are still needed or if they

require expansion.