

LICENSING POLICY 2005-2008

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
LICENSING POLICY 2005-2008

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 on licensed premises, by qualifying 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 apply when making decisions upon applications received for:
- 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 will be issuing further guidance notes to support the Policy. These do not form part of the Policy but are intended as further guidance and information for the applicant.
- 1.3 The Policy takes into account Department of Culture, Media and Sport (DCMS) guidance to Local Authorities, 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, 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 is 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. Departments within the Herefordshire Council (e.g. Planning, Environmental Health, 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 [to be adopted] 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 consultation with interested parties.
- 1.7 The objective of the licensing process is to allow the carrying on of retail sales of alcohol and the provision of regulated entertainment in a way that ensures public safety and which is neither to the detriment of the residents, nor gives rise to loss of amenities. 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 and the community.

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 out weights the impact from the individual premises themselves. The Council cannot refuse correctly completed applications that meet legislative requirements unless relevant representations have been made. 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. The Council is currently considering representations from the West Mercia Police regarding Commercial Road. Should a cumulative impact policy be adopted, 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.

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- 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.

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 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, however, the applicant would have to show compelling reasons why the premises should be considered for a licence.

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- 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, which 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;

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- 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 present on any licensed premises (e.g. for the showing of a film predominantly aimed at children or a pantomime) then conditions will be imposed 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.

6. Conditions of Licence

- 6.1 The Council will enforce against Operation plans but 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. Conditions attached to various licences will be focussed on matters that are within the control of individual licensees and others in possession of relevant authorisations. 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 of licence uniformly across its area, but instead will draw upon a model pool of conditions issued by the DCMS and 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. Additional guidance notes detail which of the pool conditions may be imposed.

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 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.

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;

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- 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 in the opinion of the Council falls into any of the above categories, the Council may rule that it is not to be shown. The Council's decision is final in that respect.

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.

11. Capacity

- 11.1 The fire safety certificate should impose number restrictions for individual premises. 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 purpose of crime and disorder, and;
 - b. If the fire safety certificate was issued prior to any licence/activity taking place at the premises.
- 11.2 Should there be no fire certificate, the Council will impose a maximum number of persons to be on all premises where licensable activities are provided at any one time in order to promote the licensing objectives. The Council can only impose an occupancy figure following a relevant representation from a responsible authority.
- 11.3 Occupancy limits should be clearly stated in both Operating schedules and Risk assessments submitted as part of a licence application.

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 a local resident's association, local business or trade association.
- 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) A vexatious bears its ordinary meaning in relation to representation. The Council will determine, on its merits, whether a representation by an interested party is vexatious.
 - (c) A frivolous representation are 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. However, in accordance with the spirit of the act, the Council will seek to resolve issues.

14. Applications

- 14.1 Applications should be submitted in the prescribed manner. Full details required in applications will be covered by Government Regulations that are due to be issued in September 2004

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15. Fees

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

16. Scheme of Delegated Functions

16.1 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		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated personal licence holder		If a police objection	All other cases
Request to be removed as designated personal licence holder			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for Interim Authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexations 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:

Appendix One

Special Policy

There are currently no areas in Herefordshire where a Special Policy applies. Special Policies may be implemented at a future date following consultation with the West Mercia Police. West Mercia police have already made representations in relation to Commercial Road, these are being considered by the Council and are available on the website

1. The Council has a special policy of refusing new licenses whenever it receives relevant representations about the cumulative impact that it concludes should lead to refusal.
2. 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 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
3. 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.
4. Special policies will be reviewed regularly to assess if they are still needed or if they require expansion.