

Licensing Sub-Committee

Monday, 6th February, 2012
1.00 - 3.58 pm

Attendees	
Councillors:	Garth Barnes, Diggory Seacome and Jon Walklett

Minutes

1. ELECTION OF CHAIRMAN

Councillor Seacome was elected as the Chairman by the Sub Committee.

2. APOLOGIES

None

3. DECLARATIONS OF INTEREST

None

4. GAMBLING ACT 2005

Prior to the start of the meeting all parties introduced themselves as follows;
Ladbrookes Betting & Gaming Ltd
Jeremy Phillips – Barrister
Julia Palmer – Solicitor
Derek Bacon – Company Development Manager
Christopher Lynch – Regulatory Property Director

William Hill
Philip Kolvin – Barrister
Andrew Lyman – Head of Public Affairs
Brian Minihane – Development Manager
Richard Taylor – Solicitor

Louis Krog, Senior Licensing Officer introduced the report as circulated with the agenda. An application had been received from Ladbrokes Betting & Gaming Limited to vary their existing betting premises licence to reduce the size of the existing betting premises to 11 – 17 Winchcombe Street.

At the same time an application for a new betting premises licence was also made for new betting premises at 19 Winchcombe Street effectively splitting the existing premises into two separate betting premises.

Appendix A of the report showed a copy of the current licence.
Appendix B of the report showed copies of both applications.
Appendix C of the report detailed drawings of the proposed new layout of the premises.

Appendix D of the report detailed a drawing of the existing layout of the premises.

An objection had been submitted against the application and variation from William Hill. The objection was attached at Appendix E.

Jeremy Phillips, Barrister spoke on behalf of Ladbrookes Betting & Gaming Ltd. He referred the Committee to the opening submissions that would be referred to. A copy of the submissions will be attached as supplementary documents to the minutes for reference.

Jeremy Phillips confirmed Ladbrookes Betting & Gaming had applied for a variation and a new application. The interested party, William Hill objected to the applications because they felt their business interests may be affected if the licences were granted. The interested party will have to accept that there can be no objection made based on demand or need.

William Hill says the representation is purely commercial and claim the applications are against the spirit of the Act and that the premises is being split. The applications were not made to specifically cater for demand during Cheltenham Races – this is not relevant and Jeremy Phillips argued that the plans showed separate premises.

Jeremy Phillips referred the Committee to the plans of the premises and in particular the staff area in the lobby. The plan suggested a wall partitioned the side of the lobby but in fact this was a fire door that enabled staff to have access to the toilet on the ground floor. This area was a private space for staff use only and if the Committee were preferable to the door being screened off creating a wall then the applicants would be happy to do this.

Jeremy Phillips turned to page 2, point 4 of the papers which showed the applicants six principal submissions in response to the objection.

Jeremy Phillips turned to page 5, point 4e of the papers which referred to the 'Camden application' and noted referrals to this made by the interested party as point ei, ii 1, 2, 3, 4 state. Point f of the papers confirmed that no other interested party had raised representation to the applications.

Point 5, page 5 detailed how the application must be determined and point 6 showed the relevant code of practice.

Points 8i, ii, iii, iv on pages 6 and 7 provided additional information for the sub committee.

Point 9, page 7 stated that the interested party relied upon paragraphs 7.12 – 7.14 of the s.25 Guidance in support of its objection but the guidance said; as listed in points 9a, b, c, d and e.

Point f (i) page 8 asked if a separate registration for business rates were in place for the premises.

Point f (ii) page 9 - Mr Lynch confirmed the neighbouring premises were owned by the same person.

Point f (iii) page 9 – Mr Lynch confirmed each of the premises could be accessed from the street or a public passageway. A Member asked if in time if the premises could be accessed separately. Mr Lynch confirmed this could be done.

Point f (iv) page 9 – Mr Lynch advised that the premises could not be accessed from any other gambling premises internally but could be accessed from the street.

Jeremy Phillips read out point g on page 10.

In summary, Mr Phillips stated that this was a bona fide application for a second betting office. The total cost of the refit for the smaller and larger units would be £129,000 and £153,000 respectively. If granted the premises would offer the full range of bookmaking services to different sectors of the market.

Jeremy Phillips continued by stating that the representations made by William Hill Organisation Ltd are wholly without either merit or support from any regulatory authority. They do not and cannot suggest that there is any threat whatsoever to the three licensing objectives which underpin all considerations of both the Commission and this authority.

Jeremy Phillips referred the Committee to the separate document that formed a brief statement to emphasis matters of access and provided various photographs of internal layouts of other Ladbrookes premises. A photograph was provided showing an external view of two Ladbrookes premises with a different business in between them. This showed the current business case and demand.

The document also provided various gambling material for information.

Members asked the following questions:

- A Member referred to the two Ladbrookes premises photographed with a different business in between each unit. The Member asked how the public would perceive the frontages of the proposed application and would they be able to differentiate between the two?
- Jeremy Phillips stated that each premises would have its own front door and members of the public would see the premises were internally partitioned.
- A Member referred to one of the premises being more appealing to those of a younger age and asked how customers would be engaged by the premises. Could one of the units be re branded perhaps?
- Jeremy Phillips stated that Ladbrookes is a strong brand as this was not needed.
- Christopher Lynch confirmed this and that the internal appearance in each premises would be different.
- A Member asked if door staff would be employed to ensure underage persons could not enter the premises.

- Derek Bacon confirmed door staff would not be present and that all staff are trained in dealing with underage customers. Ladbrookes operates a Think 21 Policy and all customers who are unable to provide identification are asked to leave the premises.
- A Member sought clarification on the plans about the door by the lobby and asked if this could this be altered to create a permanent partition?
- Jeremy Phillips clarified that the plans were incorrect. The plan appeared to show a partitioned wall but in fact this was an interconnecting door.
- When asked, Christopher Lynch confirmed if this door was partitioned off the main door was sufficient for use as a fire escape.

Philip Kolvin, QC spoke on behalf of William Hill Organisation Limited. He stated that this was the first hearing William Hill had attended in four years and this was due to their concern over the matter in hand.

One of the Gambling Act 2005 principal objectives was to limit high stake, high prize gaming machines and limit the potential harm to vulnerable people. Each premises were limited to four B2 (high stake) machines. These machines are highly profitable making up to £40,000 per annum.

Philip Kolvin stated that William Hill does and will continue to operate strictly to the rules and wants others to operate in the same manor. He stated that these applications were about obtaining another four high stake machine inside the premise and boundaries were trying to be pushed.

Philip Kolvin said that Ladbrookes had made a similar application in 2009 in Camden. The Gambling Commission tightened up rules and subsequently Ladbrookes withdrew a large number of applications. This application was a subtle attempt to do exactly the same. Salami slicing existing premises was not permitted and went against what Parliament had intended. Some industries were finding loopholes and this reflected badly on the rest of the industry

Philip Kolvin advised the Committee that the two reasons the applications should not be granted were as follows;

1. Internal reconfiguration of a building does not result in two premises.
2. Section 153 of the Act states that this kind of internal division of a building effectively doubles the number of machines.

Philip Kolvin listed the following twelve reasons why the applications should be refused:

1. One building would be trading from 11-19 Winchcombe Street as a single premises.
2. The two units have the same owner.
3. They have the same operator.
4. They trade under the same banner.
5. Profits from the two units will go to Ladbrokes.
6. One set of business rates.
7. Units as depicted in planning and indicate staff have access from one unit to the other.
8. Staff areas are communal, access is needed to the larger unit to use the w.c.

9. Customers would need to leave the small unit and go into the larger unit to use the w.c.
10. The small unit could not be let out to anyone else.
11. Mr Phillips stated that there is a different market and a matter of demand with does not matter and is not relevant. Nothing the smaller unit offers will be different to the larger unit.
12. The premises are one unit not two. The common sense view says they have the same livery and that it looks like one operation.

Philip Kolvin stated that Jeremy Phillips made reference to the fact that the Gambling Commission had not objected to the application. He referred to a letter from the Gambling Commission which drew attention to section 7.56 for their Guidance to Licensing Authorities 3rd Edition, May 2009 which states: "The Commission does not routinely make representation on premises licence applications. However, the fact the Commission has not made a representation on a particular premises licence application should not be taken as indication that the Commissions' approval of that application"

Louis Krog provided a copy of the letter to Jeremy Phillips for reference. Phillip Kolvin referred the Committee to the interested party's evidence bundle which would be referred to now. A copy of the bundle is available as background papers.

Phillip Kolvin advised that tab 1 showed a plan of the smaller unit and tab 2 showed a plan of the larger unit. He stated that the larger unit plan was not compliant as it did not show the internal exit door.

Tab 3 provided a full plan of the premises that had been submitted with the planning application. Referring to this plan Phillip Kolvin confirmed that there was only one safe for the two units and customers would need to exit the small units and enter the larger unit to use the w.c.

Tab 4 provided the Gambling Act itself and detailed the 3 Licensing Objectives, one of which was protecting children and other vulnerable persons from being harmed or exploited by gambling.

Page 7 of tab 4 listed guidance to local authorities; page 9 of tab 4 detailed the nature of licence and what a premises licence is and page 10 stated what a premise licence must specify. Section (c) reads a premises licence must specify the premises in which it relates.

Page 12 of tab 4 1 (a) reads; A premises licence may not authorise the use of premises for activities of more than on of the kinds specified in section 150(a) to (e) (subject to sections 172 to 174 and subsection (2) below) and

(b) may not be issued in respect of premises if a premises licence already has effect in relation to the premises (subject to subsection (3)).

Page 13 of tab 4 detailed principles to be applied. Philip Kolvin refers to points 1 a, b, c, and d and sub section 2 which says; in determining whether to grant a premises licence a licensing authority may not have regard to the expected demand for the facilities which it is proposed to provide.

Page 14 of tab 5 details making an application.

Page 17 of tab 5 shows how the Gambling Act measures what is in it and page 20 lists the category of gaming machines.

Page 29 of Tab 6 details the minimum and maximum stakes for all gaming machine categories.

Page 30 of tab 7 provided a copy of the Explanatory memorandum to the Gambling Act 2005 (mandatory and default conditions) (England and Wales) Regulations 2007. Page 33 of tab 7 point 7.6 states that the Act provides that, except in the case of tracks, a single premise may not have more than one premises licence authorising a type of gambling activity. There were concerns that some unscrupulous operators might seek to circumvent this by artificially subdividing their premises and securing separate premises licences for its composite parts, which would undermine the different categories of premises licence created by the Act. Phillip Kolvin said this is precisely the situation here and that boundaries were trying to be pushed.

Tab 8 provided the reaction of the Gambling Commission to these cases and provides a copy of the split premises and primary gambling activity consultation document, June 2008. Page 42 of this document at point 2.1 shows the definition of a premise.

Tab 9 provides a copy of the Gambling Commission Guidance to Licensing Authorities 3rd Edition, May 2009. Page 58 of the document at 7.12 to 7.20 the meaning of premises.

Tab 10 shows Opinions of the Lords of Appeal for Judgement in the Cause Majorstake Limited (Respondents) v Curtis (Appellant) dated Wednesday 6 February 2008.

Tab 11 provided a copy of an extract of Philip Kolvin's book, Gambling for Local Authorities. Page 89 of the document at point 11.141 to point 11.144 on page 90 were read to the Committee. Page 90 at point 11.150 and page 93 11.153 to 11.154 were also read to the Committee.

Tab 12 showed a copy of the Leisure World (UK) Ltd v London Borough Of Islington. Various paragraphs were referred to on pages 99 and 100 of the document.

Tab 13 provided a copy of the Gambling Commissions Licence Conditions and Codes of Practice Supplement 4: Primary gambling activity.

Tab 14 lists all of Ladbrookes previously submitted applications and the current status of them. The list showed a large number of the applications had been withdrawn.

In summing up Philip Kolvin said that if this application was granted other applicants would start splitting premises which was why William Hill were very anxious that the application was not permitted to develop.

Phillip Kolvin referred to the six points Jeremy Philips had made in point 4, page 2 of his submission and replied to each point as follows:

4.a This point stated that it is neither lawful nor contrary to policy to re-configure such a property in separate units provided 'they are configured acceptably' and 'they are not artificially or temporarily separated, for example by ropes or moveable partitions'. Philip Kolvin said there was not point to this comment and the separation of this premises was not genuine and did not create a separate premises.

4.b This point referred to the Gambling Commission not making a representation against this application. Philip Kolvin confirmed this had been dealt with after reading the letter from the Gambling Commission previously.

4.c Listed what each of the two premises would have separately in each unit. Philip Kolvin said that without these listed items being contained in the premises there would not be a betting premise there.

4.d Detailed two separated markets for betting services. Philip Kolvin referred the Committee to Section 153 and confirmed that demand for services irrelevant.

4.e Referred to the previous Camden application. Philip Kolvin stated that this was a completely different application to the one before Committee today. That application referred to two separate premises with another business sat between the premises. The Camden application was not about the same issue as today's application.

4.f Addressed the general consideration of the application, s.153 of the Act and listed what it provided. Philip Kolvin confirmed that William Hill were here today to raise material matters to the Committees attention and stressed that the Committee needed to have a guarded approach in making a decision today.

Finally, Philip Kolvin stated that this application had been made to save money. Management on the premises could be split and there would only be a need for one satellite feed resulting in a saving of around £160.000.

Jeremy Phillips replied to the points made. He said that in reality the application would have been granted had William Hill not objected to the application. No objections had been made from any other authorities or local residents.

Jeremy Phillips stated again that the premises is clearly split and are independent premises. He referred to the 12 points that were mentioned in page 3, point c of the background papers.

In summing up Jeremy Phillips said this was an entirely bona fide application. The ultimate test would be when members of the public attended the premises. The applicant confirmed the premises are separate operations and advised that they would be happy to dispense of the internal door at the back of the premises and seal it off.

The Sub Committee retired from the Chamber to make their decision at 14:59.

The Sub Committee returned to the Chamber at 15:55 with their decision.

Resolved that;

The Sub Committee has considered an application to vary and an application for a new premises licence made by Ladbrokes in respect of 11-19 Winchcombe Street Cheltenham.

In reaching its decision the Sub Committee has considered the submissions made by the Applicant and the Interested Party at the Sub Committee this afternoon and the documentation submitted by the Applicant and the Interested Party.

The Sub Committee has also noted what was seen during the site visit to Winchcombe Street.

Finally, the Sub Committee has considered the information contained in the officer's report, the Council's statement of licensing policy, the relevant legislation and the Gambling Commission Guidance. In particular, the Sub Committee has considered paragraphs 7.12 to 7.24 of the Guidance and paragraph 7.6 of the Explanatory Memorandum to the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007.

Having listened to both comprehensive presentations the Sub Committee explained that it felt that, despite all the proposals to convert the building into two premises on balance not all the issues concerning the sub division of the premises have been addressed and that the applicant had reached an artificial compromise that does not satisfy the Sub Committee.

Consequently the application to vary the premises licence at 11-17 Winchcombe Street is refused and also therefore the application for the grant of a new premises licence at 19 Winchcombe Street is also refused.

The Sub Committee also considered the Licensing Objectives in coming to its decision and in particular the licensing objective of protecting children and other vulnerable persons from being harmed or exploited by gambling.

The Chairman also reminded the applicant of their appeal rights.

Chairman

**BEFORE CHELTENHAM BOROUGH COUNCIL
(AS LICENSING AUTHORITY)**

Ladbrokes Betting & Gaming Ltd

Applicant

-and-

William Hill Organisation Ltd

Interested Party

**OPENING SUBMISSIONS ON
BEHALF OF THE APPLICANT**

1. The Applicant has applied for the variation of an existing Betting Premises Licence ('BPL') and the grant of a new BPL for premises at 11-17 Winchcombe Street, Cheltenham and 19 Winchcombe Street, Cheltenham respectively.
2. The Interested Party has objected to the proposal on the basis that it has 'business interests that might be affected by the grant of a new licence'. S.153(2), of course, prevents any application being opposed on the ground of the 'expected demand for the facilities which it is proposed to provide' (i.e. a 'need' objection).
3. In advancing its objection, the Interested Party has argued that:
 - a. Its representation is 'not a purely commercial objection' (see para 2 above);
 - b. The grant of the application 'offends the spirit of the Act';

Page 2

- c. The application involves ‘premises splitting’ which, it says, ‘is an issue of wider industry and political concern’;
 - d. An additional licence is not necessary to cater for demand during the Cheltenham Festival; and
 - e. ‘It is clear from the plans submitted that this is not separate premises as it clearly shows shared staff facilities’.
4. The applicant makes the following six principal submissions in response:
- a. The existing property involved in the present case comprises a combination of what would have originally been designed as potentially 4 individual units (Nos. 11, (omitting 13), 15, 17 & 19). It is neither unlawful nor contrary to policy to re-configure such a property into separate units provided ‘they are configured acceptably’ and ‘they are not *artificially or temporarily separated, for example by ropes or moveable partitions*¹’;
 - b. The concept of ‘premises splitting’ was one raised by the Gambling Commission, as the over-arching industry regulator in 2008, when it became concerned that operators of certain premises were indeed purporting to sub-divide existing premises so as to increase their entitlement to provide various categories of gaming machines under the Gambling Act 2005 (‘the Act’). The Commission has published detailed Guidance on the subject. It monitors applications made to licensing authorities and ‘compliance with the primary gambling activity requirement’. Where it considers that a proposal could be in breach of its guidelines, the Commission says that it “will not hesitate to make representations on premises applications”. Following consideration of the application and detailed discussions with the Applicant *the Commission has*

¹ Paragraph 7.13 Gambling Commission’s *Guidance to Licensing Authorities 3rd Edition* (May 2009)

neither objected to, nor made representations in relation to the present application;

c. The absence of a Commission objection is explained by the fact that the proposal does not, in fact, offend against its Guidance. Each of the two premises will have their own, separate:

- i. Public entrance
- ii. Information on responsible gambling
- iii. Arrangements for self-exclusion
- iv. Rules of betting
- v. Betting information, 'odds', Results boards etc.. (on screens)
- vi. Positions for placing bets
- vii. Winnings / Pay counter
- viii. Notice on Complaints procedure
- ix. Self Service Betting Terminal (x2)
- x. Fixed Odds Betting Terminal (x4)
- xi. Customer Information Terminal (touch screen access, odds etc..)
- xii. Permanent staffing
- xiii. Induction and continuing training
- xiv. Annual Risk assessment
- xv. Safe (with time lock)
- xvi. CCTV
- xvii. Security mirrors
- xviii. Alarm system
- xix. Panic buttons
- xx. Magnetic door locks
- xxi. Fire extinguishers
- xxii. Disabled access

xxiii. Air conditioning & ventilation

xxiv. Staff WC

In fact, all of the characteristics of a traditional betting office.

d. Ladbrokes research and experience has identified (at least) two rather separate markets for betting services:

i. An older age group, often including a number of individuals who have retired from their employment (as well, of course, as younger people who prefer a traditional-style unit), use its premises for meeting friends and general social interaction. Their betting, in the main, revolves around horse and dog racing. They appreciate the space provided in the larger units for sitting at tables, watching races, enjoying hot and cold drinks and chatting. As the larger of the two units (941 sq ft as against 257 sq ft), the premises at 11-17 Winchcombe Street will, additionally, be able to offer:

1. 'Ladbrokes Extra TV (for additional information)
2. 3 large screen TVs + 'Sports Zone' for viewing individual events/races

ii. The smaller of the two units represents a 'small format' concept which is a significant part of Ladbrokes' growth strategy. It has been designed to suit the tastes of a different demographic, the 24-30 year old age group. This group is looking for a more modern, trendy and more technology led betting experience. This age group is likely to place bets on sporting events such as football, golf, cricket etc and is happy to use a self service betting terminal for these purposes, with many preferring that facility to counter service. These units tend to have a quicker throughput, with customers not wishing to stay as long as those in the traditional betting shops.

Page 5

These are genuine and significant differences in the retail 'offer' that is being made and reflect a genuine business case for a new smaller style² of betting office.

- e. As regards the 'Camden application', to which the Interested Party refers:
 - i. This related to an entirely different set of facts, with which this sub-committee may not wish to become concerned (every application, of course, being considered on its own merits);
 - ii. In the event that the sub-committee does wish to consider the Camden application then:
 - 1. As can be seen from the attached plan, it related to a 'shop within a shop' arrangement, rather than two separate units;
 - 2. The licensing authority (as a 'responsible authority') itself raised representations;
 - 3. The Gambling Commission lodged a letter expressing concerns regarding the application;
 - 4. In the light of these matters, Ladbrokes decided to withdraw the application.
- f. No Responsible Authority, or Interested Party (apart from William Hill), have raised representations in relation to the application.

5. Addressing the general consideration of the application, s.153 of the Act provides that:

“(1) In exercising their functions under this Part a licensing authority shall aim to permit the use of premises for gambling in so far as the authority think it—

- (a) in accordance with any relevant code of practice under section 24,

² It may be of interest to the sub-committee to note that even within its existing estate Ladbrokes has some 58 shops which are smaller than the proposed unit at No.19 Winchcombe Street.

Page 6

(b) in accordance with any relevant guidance issued by the Commission under section 25,

(c) reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b)), and

(d) in accordance with the statement published by the authority under section 349 (subject to paragraphs (a) to (c)).

(2) In determining whether to grant a premises licence a licensing authority may not have regard to the expected demand for the facilities which it is proposed to provide.”

6. The relevant Code of Practice ('the Code') under s.24 is the Commission's 'Conditions and Codes of Practice applicable to Non-remote General Betting Licences' published in October 2010. The Applicant, as well as the premises which are the subject of the present applications, complies fully with the provisions of the Code.
7. As regards the issue of the 'primary gambling activity', addressed in the Code and to which reference is made in paras 3.3-5 of your Officer's Report:
 - a. Betting will be offered *at all times* in the new premises, both by way of 'over the counter' service and the use of the SSBTs provided;
 - b. There will never be a time when betting is possible only by way of betting machines.
8. In addition, for the information of the sub-committee:
 - i. As shown on the attached plan, the ratio of the space available to customers allocated to the primary gambling activity, compared with that allocated to other gambling activities (common or shared space being excluded) is **1.57:1**. Traditional betting is therefore quite clearly the dominant use of the premises;

- ii. The extent to which the primary gambling activity is promoted on the premises and by way of external advertising, compared to other gambling activities, will be the same as every other Ladbrokes and major bookmakers betting office. It will include promotion of every major UK sporting event and, of course, many international races and competitions;
- iii. the use to be made of the different gambling facilities is difficult to predict with great accuracy, but as the shop can accommodate approximately 17 people - and only 4 can play on the FOBTs at any one time - it follows (as would be the Applicant's expectation) that the majority of customers visiting the premises will be using them for 'traditional' betting activities;
- iv. the range and frequency of events on which bets can be made will, again, be broadly the same as may be found in every other Ladbrokes and other national bookmakers' offices.

In its Code of Practice (see below) the Commission correctly advises licensing authorities that all of these factors (in respect of which both premises would be fully compliant) do not ' .. need to be present in a particular case, nor do they preclude others, but the combination of those factors that are present should be sufficient to indicate that the activity is the primary one in any given premises.'

9. The Interested Party says that it relies upon paragraphs 7.12 – 7.14 of the s.25 Guidance in support of its objection. However, as that Guidance says :
 - a. 'there is no reason in principle why a single building could not be subject to more than one premises licence, provided they are for different parts of the building, and the different parts of the building can reasonably be regarded as

being different premises’ – which, it is submitted, is clearly the present case; [7.12]

- b. ‘licensing authorities should pay particular attention if there are issues about sub-division of a single building or plot’ – the Applicant invites the sub-committee to consider its detailed proposals in relation to each unit; [7.12]
- c. ‘ .. and should ensure that mandatory conditions relating to access between premises are observed’ – there is full compliance; [7.12]
- d. ‘Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.’ – the Applicant invites the sub-committee to consider its detailed proposals in relation to each unit; [7.13]
- e. ‘We recognise that different configurations may be appropriate under different circumstances but the crux of the matter is whether the proposed premises are genuinely separate premises that merit their own licence with, for example, the machine entitlements that brings and are not an artificially created part of what is readily identifiable as a single premises.’ – the Applicant invites the sub-committee to consider its detailed proposals in relation to each unit; [7.14]
- f. Additional issues (which are not raised by the Interested Party, but which the sub-committee might properly wish to consider) are raised in paragraph 7.18:
 - i. Is a separate registration for business rates in place for the premises? – the answer is presently ‘No’, as the combined premises are clearly owned by the Applicant.

Whilst such shared ownership may initially raise the question of ‘split premises’ and cause the Commission to address the issue (as happened in this case) it does not of itself, it is respectfully submitted, bear on the issue of the physical separation or identity of the two premises in this particular case, which is a question of fact to be considered, based on the proposed plans and operation of the premises.

It would, in passing, be the Applicant’s intention to apply for separate rateable values in respect of each unit in the event of the present applications being granted;

- ii. Is the premises’ neighbouring premises owned by the same person or someone else? – the preceding comments apply;
- iii. Can each of the premises be accessed from the street or a public passageway? – this is a physical issue and one which could be material to an independent observer. The simple answer is ‘Yes’;
- iv. Can the premises only be accessed from any other gambling premises? – similarly – and ‘No’ (even though such an arrangement in respect of licensed betting offices would not actually be prohibited)³.

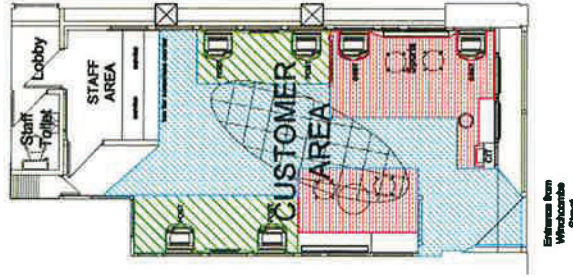
As the Commission properly acknowledges, ‘In determining whether two or more proposed premises are truly separate, the licensing authority should be aware of factors which could assist them in making their decision.’ The factors set out above are merely ones which *may* assist them, but any decision must be made (emphasis added) ‘*[D]epending on all the circumstances of the case ..*’

³ Whilst there is absolutely no *public access*, the plans lodged do show an interconnecting door merely for the ‘convenience’ on occasion of Ladbrokes staff in the larger unit, who would otherwise have to use the WCs located at first floor level above 11 – 17 Winchcombe Street. This was not a matter which concerned the Gambling Commission. However, should the sub-committee feel for any reason that it is necessary, the company would be content to accept an amendment to the plans so as to remove such internal staff access between the two premises.

- g. One commonsense approach to the present application, if it is submitted, might be for the sub-committee to consider a hypothetical situation where the Applicant already owned, say Unit 11 – 17 Winchcombe Street and decided to purchase the adjoining property at No.19 with a view to licensing and developing a new smaller Betting Office concept (similar, in fact, to the arrangement that can be seen from the photographs lodged in relation to the Applicant's premises in The Bullring, Birmingham). Such a scenario would be entirely feasible and neither would, nor could, be the subject of an objection such as that presently being advanced by the Interested Party.
10. In summary, this is not one of those cases (with which the Gambling Commission was apparently concerned) where a Betting Office operator sought by an inexpensive and artificial sub-division to create a machines 'arcade' which bore no relation to the bookmaking industry which the BPL was intended to cover. In such cases it would be entirely proper for a licensing authority to withhold the grant of such a licence. Instead, in the present case we have an entirely legitimate and bona fide application for a new Ladbrokes small unit format (giving rise to total refit costs for the smaller and larger units of £129,000 and £153,000 respectively), which if granted would offer the full range of bookmaking services to a different sector of the market.
11. The representations made by the William Hill Organisation Ltd are wholly without either merit or support from any regulatory authority. They do not (and cannot) suggest that there is any threat whatsoever to the three licensing objectives which underpin all considerations of both the Commission and this authority.
12. The licensing sub-committee is invited to determine the application accordingly.

JEREMY PHILLIPS
Inner Temple
2 Feb 2012

This layout is indicative only and may change from time to time and all customer / public floor areas will be used for gambling



PROPOSED GROUND FLOOR PLAN 1:50



19 Winchcombe Street
Cheltenham
Gloucestershire
GL52 2LZ

Proposed License Plan

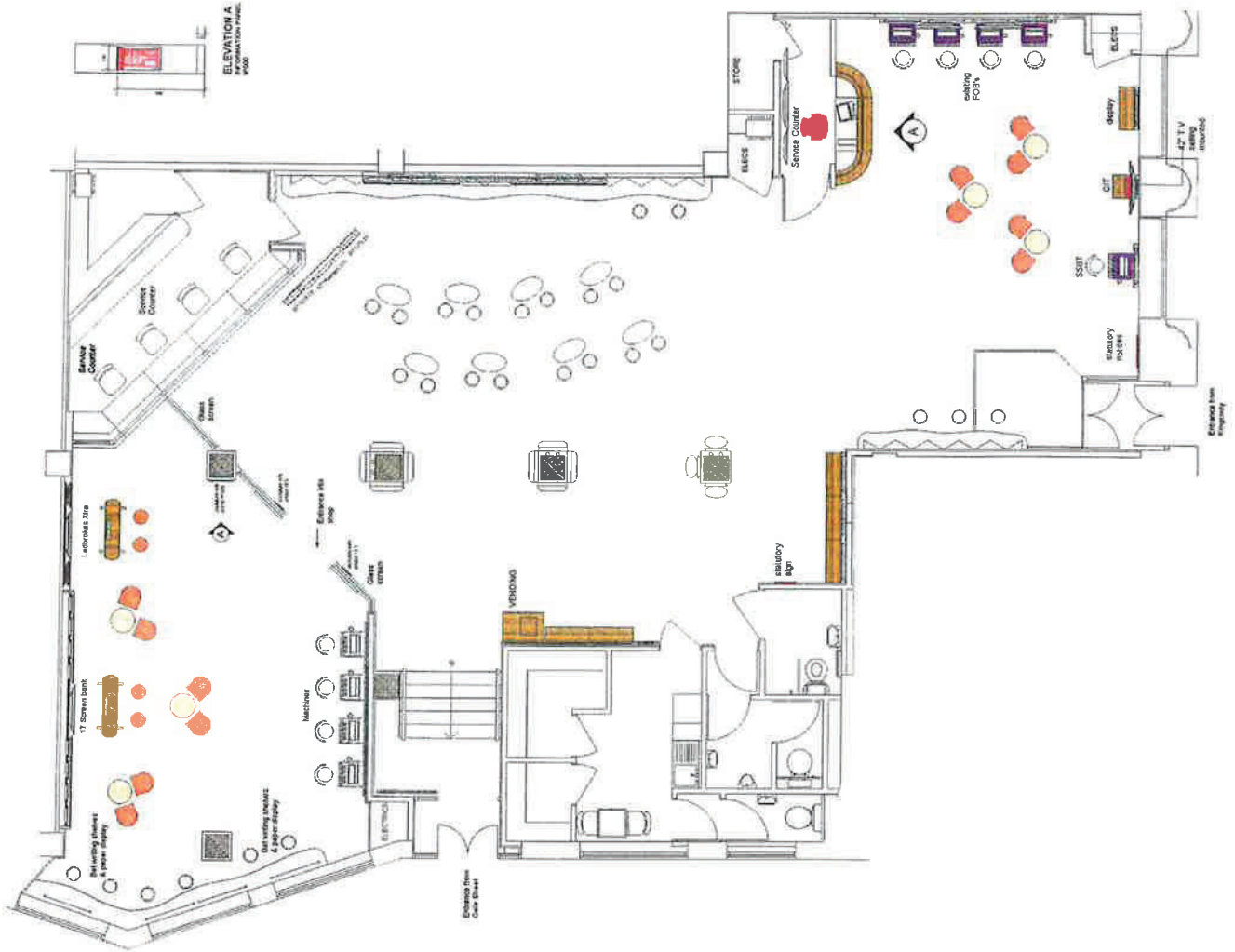
Date	Scale	
DB	Nov 2011 1:50	
Location	RAD NO.	SHOP NO.
	02	

Sketch Scheme

REVISIONS	
1	01/10/10 Initial Design
2	02/01/11 Revise Shop Counter
3	03/01/11 Final Design
4	03/01/11 Final Design
5	03/01/11 Final Design

Ladbrokes

Project:	GROUND FLOOR PLAN WITH NEW SHOP
Client:	Ladbrokes
Address:	APRICA HOUSE 74-76 BRINSFORD LONDON WC2B 8QG
Drawn:	DJ
Date:	01/10/10
Checked:	MN
Date:	08/08/02
Scale:	1:50
Sheet:	112
Of:	112





This page is intentionally left blank
Page 14