

# Cheltenham Borough Council

## Licensing Sub-Committee – 6 February 2012

### Application for a Betting Shop Premises Licence & Application for a Variation of a Betting Shop Premises Licence

#### Gambling Act 2005

#### Report of the Senior Licensing Officer

#### 1. Introduction

- 1.1 Ladbrokes Betting & Gaming Limited has a betting premises licence at 11 - 19 Winchcombe Street Cheltenham. Attached at **Appendix A (pages 11-13)** is a copy of the current licence.
- 1.2 On the 24<sup>th</sup> of November 2011 an application was made by 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.
- 1.3 Attached at **Appendix B (pages 15-25)** are copies of both applications. Drawings of the proposed new layout of the premises are attached at **Appendix C (pages 27-29)** and a drawing of the existing layout of the premises is attached at **Appendix D (page 31)**.

#### 1.4 Implications

- 1.4.1 **Financial**                      **Contact officer: Sarah Didcote**  
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#### 2. Consultation & Representations

- 2.1 A 28 day consultation period is required for all new and variation premises licence applications. In this case the last date for representations was Thursday the 22<sup>nd</sup> of December 2011.
- 2.2 An applicant is required to give notice of applications in three ways:
- a notice placed outside the premises for 28 consecutive days in a place where it can be read conveniently.
  - in a newspaper or newsletter of local relevance, on at least one occasion within ten days of the application being made.
  - to all responsible authorities within seven days of the application being made.
- 2.3 The Responsible Authorities under the Gambling Act 2005 for the area of Cheltenham Borough Council are:
- the licensing authority (Cheltenham Borough Council)
  - the Gambling Commission;
  - the Chief Officer of Police for the area;

- the local Fire Authority;
- the local planning authority;
- the local town council, parish council and parish meeting
- the Environmental Protection department;
- a body designated in writing by the licensing authority as competent to advise the authority about the protection of children from harm;
- HM Revenue and Customs;
- any other persons prescribed in regulations by the Secretary of State.

- 2.4 An Interested Party under the Gambling Act 2005 for the area of Cheltenham Borough Council is a party who:
- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
  - b) has business interests that might be affected by the authorised activities, or
  - c) represents persons who satisfy paragraph a) or b).
- 2.5 An objection was received on Wednesday the 21<sup>st</sup> of December 2011 from William Hill Organization Ltd who operates a betting shop on Winchcombe Street with the corner of Albion Street. A copy of the representation along with the referenced documents submitted is attached at **Appendix E (pages 33-60)**.
- 2.6 The legislation state that a hearing must be held to determine the applications if representations were received during the consultation period.

### **3. Principles to be Applied**

- 3.1 Section 153(1) of the Gambling Act 2005 (“2005 Act”) states that 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,
  - (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)).
- 3.2 Section 153(2) of the 2005 Act states that 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.*
- 3.3 In reference to paragraph 3.1(a) above, Members attention is drawn in particular to the sections of the code of practice below:
- 3.4 **“Primary gambling activity - Gaming machines may be made available for use in licensed betting premises *only at times when there are also sufficient facilities for betting available.***

**Such facilities for betting must include the provision of information that enables the customer to access details of the events on which bets can be made and to be able to place those bets, obtain details of the outcome of the events, calculate the outcome of their bets and be paid or credited with any winnings.**

***Where licensees provide facilities for betting only by means betting machines (machines which are designed or adapted for the purpose of making or accepting bets on future real events) the licensee must ensure that the number of betting machines is greater than the number of gaming machines which are made available for use in reliance on the premises licence.”***

- 3.5 **“Primary gambling activity (Ordinary code provision) - In order to demonstrate that the primary gambling activity for which an operating licence has been issued is being offered in each licensed premises, licensees should have regard to the following general factors:**
- ***the ratio of the space available to customers allocated to the primary gambling activity, to that allocated to other gambling activities***

- ***the extent to which the primary gambling activity is promoted on the premises and by way of external advertising compared to other gambling activities***
- ***the use, either expected or actual, to be made of the different gambling facilities.***

3.6 In reference to paragraph 3 of 3.4 above, the Committee will note from the attached plans at **Appendix C (pages 27-29)** that Fixed odds betting terminals (FOBT) and Self service betting terminals (SSBT) will be made available for use on the premises.

3.7 A schedule of the different gaming machine categories referred to in this report is attached at **Appendix F (page 61)** for the information of the committee.

3.8 In reference to paragraph 3.1(c) above, the licensing objectives are:  
 (i) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,  
 (ii) Ensuring that gambling is conducted in a fair and open way,  
 (iii) Protecting children and other vulnerable persons from being harmed or exploited by gambling  
 (It should be noted that the requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling).

#### **4. Guidance**

4.1 With reference to paragraph 3.1(b) above, the Council is required to have regard to the guidance issued by the Secretary of State. The current guidance is the 3<sup>rd</sup> edition issued in May 2009.

4.2 Listed below (para. 4.3 to 4.36) are relevant extracts from the above mentioned guidance. Members attention is drawn in particular to those sections emphasised in italics.

##### **Licensing committee's discretion to regulate its own proceedings**

4.3 ***"In carrying out its functions under this Act a local authority must 'have regard' to Guidance issued by the Commission under section 25. Please note that the definition of 'local authority' in section 25 is synonymous with the definition of 'licensing authorities' set out in section 2."*** (para 4.11)

4.4 ***"The Commission's view is that, whenever appropriate, there should be consistency across licensing authorities in the manner in which functions under the Act are carried out. In seeking to encourage consistency across licensing areas, the Commission does not seek to fetter the discretion that authorities have under the Act. This Guidance is not intended to replace the judgement of a licensing authority in an individual case. Moreover, this Guidance cannot anticipate every set of circumstances that may arise and, except in relation to Part 8 (premises licences) of the Act, as long as it has been understood and taken into account, licensing authorities may depart from it where they consider it would be right to do so. However, as discussed in part 1 of this Guidance, there should be strong and defensible reasons for departing from the Guidance, and these will need to be clearly set out if a licensing authority is to avoid judicial review for failing to take the Guidance into account."*** (para 4.14)

##### **The application of other local government legislation**

4.5 ***"Conditions on premises licences should relate only to gambling, as considered appropriate in the light of the principles to be applied by licensing authorities under section 153 (see paragraph 4.12). Accordingly, if the Commission's Licence Conditions and Codes of Practice (LCCP) or other legislation places particular responsibilities or restrictions on an employer or the operator of premises, it is not necessary or appropriate to impose the same or similar duties in conditions on a premises licence issued in accordance with the Gambling Act. Similarly, where other legislation confers powers on inspection and enforcement agencies in relation to separate activities or concerns, the Gambling Act does not affect the continued use of such powers; for example, the powers of an environmental health officer in respect of statutory nuisance under the Environmental Protection Act 1990."*** (para 4.16)

## Meaning of Premises

- 4.6 ***“In the Act, ‘premises’ is defined as including ‘any place’. Section 152 therefore prevents more than one premises licence applying to any place. But, 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. This approach has been taken to allow large, multiple unit premises such as pleasure parks, tracks, or shopping malls to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about sub-division of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.”*** (para 7.12)
- 4.7 ***“In most cases the expectation is that a single building/plot will be the subject of an application for a licence, for example, 32 High Street. But that does not mean that 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. 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.”*** (para 7.13)
- 4.8 ***“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.”*** (para 7.14)
- 4.9 ***“The Act sets out that the type and number of higher stake gaming machines allowable in premises is restricted according to the type of premises licence or permit granted. For example, a converted casino licence allows for 20 gaming machines in categories B, C or D. With the exception of AGCs (Adult Gaming Centres) and FECs, (Family Entertainment Centres) premises are not permitted to be used exclusively for making available gaming machines, but rather to provide the gaming facilities corresponding to the premises licence type. Supplement 4 of the Licence Conditions and Codes of Practice, published in January 2009, sets out in full the requirements on operators.”*** (para 7.15)
- 4.10 ***“With the exception of bingo clubs, tracks on race-days and licensed family entertainment centres, children will not be permitted to enter licensed gambling premises. Therefore businesses will need to consider carefully how they wish to configure their buildings if they are seeking to develop multi-purpose sites.”*** (para 7.16)
- 4.11 ***“Licensing authorities should take particular care in considering applications for multiple premises licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:***
- **The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling where they are prohibited from participating.**

- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not 'drift' into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Customers should be able to participate in the activity named on the premises licence." (para 7.17)

4.12 ***"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. Depending on all the circumstances of the case, these may include:***

- ***Is a separate registration for business rates in place for the premises?***
- ***Is the premises' neighbouring premises owned by the same person or someone else?***
- ***Can each of the premises be accessed from the street or a public passageway?***
- ***Can the premises only be accessed from any other gambling premises?"*** (para 7.18)

4.13 **"Where more than one premises licence is permitted within a building the gaming machine entitlement for the separately licensed premises may not be aggregated and no more than the permitted number and category of machines for the relevant type of premises may be placed in any one of the individual sets of premises within the building."** (para 7.19)

4.14 ***"The proper application of section 152 means that different premises licences cannot apply in respect of single premises at different times. There is no temporal element to a premises licence. Therefore, premises could not, for example, be licensed as a bingo club on week days and a betting shop at weekends."*** (para 7.20)

#### **Division of premises and access between premises**

4.15 **"The Gambling Act 2005 (Mandatory and Default Conditions) Regulations<sup>11</sup> set out the access provisions for each type of premises. The broad principle is that there can be no access from one licensed gambling premises to another, except between premises which allow access to those under the age of 18 *and with the further exception that licensed betting premises may be accessed from other licensed betting premises.* Under-18s can go into family entertainment centres, tracks, pubs and some bingo clubs. So access is allowed between these types of premises."** (para 7.22)

4.16 **"It should be noted that the Gambling Act 2005 (Mandatory and Default Conditions) Regulations define street as *'including any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping malls) whether a thoroughfare or not'*. This is to allow access, for example, to casinos from hotel foyers."** (para 7.23)

4.17 **"There is no definition of 'direct access' in the Act or regulations. However, it could be said that there should be an area separating the premises concerned (for example a street or cafe), which the public go to for purposes other than gambling, for there to be shown to be no direct access."** (para 7.24)

4.18 **"The relevant access provisions for each premises type is as follows:**

#### **Betting shops**

- access must be from a street (as defined above) or from other premises with a betting premises licence
- no direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a cafe – the whole area would have to be licensed." (para 7.25)

- 4.19 **"It should be noted that, unlike the Licensing Act, the Gambling Act specifically does not include as a licensing objective the prevention of public nuisance. Any nuisance associated with gambling premises should be tackled under other relevant laws." (para 7.54)**

### **Gaming machines**

- 4.20 **"Section 172(8) provides that the holder of a betting premises licence may make available for use up to four gaming machines of category B, C or D. Regulations state that category B machines at betting premises are restricted to sub-category B2, B3 and B4 machines." (para. 19.15)**
- 4.21 **"It is not permissible for an operator to offer gaming machines on a premises which is licensed for betting but not to offer sufficient facilities for betting. A betting operating licence authorises its holder to 'provide facilities for betting' (section 65(2)(c) of the Act). Likewise, a betting premises licence authorises premises to be used for 'the provision of facilities for betting...' (section 150(1)(e) of the Act). The ability to make up to four gaming machines, within categories B2 – D, available is an additional authorisation conferred upon the holder of a betting premises licence (section 172(8) of the Act); it is not a free standing right to make gaming machines available for use. It follows that unless a betting premises operator offers sufficient facilities for betting it should not be making gaming machines available on the premises in question." (para 19.19)**
- 4.22 **"In the Commission's view it is also important, in relation to the licensing objective of protecting vulnerable persons from being harmed or exploited by gambling, that customers should be offered a balanced mix of betting and gaming machines in licensed betting premises. Thus, whilst the Commission recognises that betting premises are permitted to offer gaming machines, including B2 gaming machines, the Commission considers that betting should be the primary element of the gambling facilities being offered to customers in such premises. Betting may be provided by way of betting terminals or over a counter (face to face)." (para 19.19)**
- 4.23 **"Accordingly, an operating licence condition provides that gaming machines may be made available for use in licensed betting premises only at times when there are also sufficient facilities for betting available." (para 19.20)**

## **5. Policy Statement**

- 5.1 In reference to paragraph 3.1(d) above, the Council must have regard to its published policy statement. The Council's current policy statement was adopted by Council on the 14<sup>th</sup> of December 2009.
- 5.2 Below (para 5.3 to 5.11) are relevant extracts from the Council's policy statement.
- 5.3 ***"Each case will be decided upon its merits. This authority will not apply a rigid rule to its decision making. It will consider the examples of considerations provided in the Gambling Commission's Guidance for local authorities at 8.14 and 8.15. It will also consider the Gambling Commission's Guidance that "has business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices." (Page 4/5)***
- 5.4 ***"It is appreciated that as per the Gambling Commission's Guidance for local authorities "moral objections to gambling are not a valid reason to reject applications for premises licences"...and also that unmet demand is not a criterion for a licensing authority." (Page 7)***

- 5.5 **“Definition of “premises” - Premises is defined in the Act as “any place”. Different premises licences cannot apply in respect of a single premises at different times. However, it is possible for a single building to 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 be reasonably regarded as being different premises. Whether different parts of a building can properly be regarded as being separate premises will always be a question of fact in the circumstances. However, the Gambling Commission does not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises.” (Page 7)**
- 5.6 **“Location - *This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. As per the Gambling Commission’s Guidance for local authorities, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.*” (Page 8)**
- 5.7 **“This licensing authority has noted the Gambling Commission’s Guidance for local authorities states that;**
- “In determining applications the licensing authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, in effect those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal. Licensing authorities should bear in mind that a premises licence, once it comes into effect, authorises premises to be used for gambling.”***  
**(Page 8)**
- 5.8 **“Accordingly, a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use. This is why the Act allows a potential operator to apply for a provisional statement if construction of the premises is not yet complete, or they need alteration, or he does not yet have a right to occupy them.” (Page 8)**
- 5.9 **“Conditions - Any conditions attached to licences will be proportionate and will be:**
- ***relevant to the need to make the proposed building suitable as a gambling facility;***
  - ***directly related to the premises and the type of licence applied for;***
  - ***fairly and reasonably related to the scale and type of premises; and***
  - ***reasonable in all other respects.”*** (Page 9)
- 5.10 **“Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This licensing authority will also expect the licence applicant to offer his/her own suggestions as to way in which the licensing objectives can be met effectively.” (Page 9)**
- 5.11 **“This licensing authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives.” (Page 9)**

## 6. Licensing Comments

- 6.1 In determining the applications, the Committee is obligated to apply the principles set out in section 153 of the 2005 Act. In reference to the aforementioned section of the Act, the Committee must satisfy itself that the use of the premises for gambling is in accordance with the relevant code of practices (Appendix F), the guidance issued by the Secretary of State, reasonably consistent with the licensing objectives (para 3.5) and in accordance with the Council's adopted policy statement.
- 6.2 In reference to paragraph 7.52 of the Secretary of State's guidance, representations that are likely to be relevant are those that relate to the licensing objectives, or that raise issues under the Licensing Authority Statement of Policy, or the Commission's Guidance or Codes of Practice.
- 6.3 In the case of the objection by William Hill, Members will note that the basis for their objection relates to the fact that the nature of the two applications by Ladbrokes is contrary to the Secretary of State's guidance and the relevant code of practice.
- 6.4 In light of the nature of the objection and that of the applications, the question for the Committee to determine relates to the nature of the two premises and in particular whether the "split" is sufficient to constitute two separate premises under the Act.
- 6.5 In reference to the above, I draw Member's attention in particular to paragraphs 7.13, 7.14, 7.17 & 7.18 of the Secretary of States' Guidance (para 4.7 – 4.12 of this report).
- 6.6 Paragraph 7.18 of the Secretary of States Guidance's guidance sets out non exhaustive list of relevant factors the Committee can take into account when determining whether the two premises are truly separated.

For the information of Members:

- Ladbrokes have not applied, at the time of writing this report, for separate business rates for the two premises,
  - Both the premises are owned by Ladbrokes,
  - Access to the two premises are from the street,
  - Each premises has separate street access, and
  - Members are to note that the proposed plans do indicate a shared staff area from which either of the premises can be accessed.
- 6.7 The applicants have confirmed that the specifications for the dividing wall are as follows:  
"The dividing wall proposed to separate the two units at the above location is made up of two skins of softwood studwork each of which is faced with fire line board to provide 1 hour fire separation between the units. The wall is built off the existing ground floor slab level up to the underside of the first floor construction. The door is a half hour door set with vision panels and a closer."
- 6.8 Members are reminded that moral objections to gambling and unmet demand for gambling activities are not valid reasons to reject applications.
- 6.9 The Committee must bear in mind that it is determining two separate applications. Having considered all the relevant facts, the Committee must ultimately determine each application in turn and decide to either grant or reject the applications.



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**Background Papers**

- Conditions and Codes of Practice applicable to Non-remote General Betting Licences, Non-remote Pool Betting Licences & Non-remote Betting Intermediary Licences [October 2010]
- Cheltenham Borough Council Gambling Policy Statement of Principles adopted by Council on the 14th of December 2009
- Guidance to Licensing Authorities 3rd Edition [May 2009]

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