

**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';

- 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.

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.

(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