

Cheltenham Borough Council

Licensing Sub - Committee (Alcohol and Gambling) – 5th June 2024

Gambling Act 2005: Determination of Application for a Premises Licence – Adult Gaming Centre

ADMIRAL, 218 High Street, Cheltenham, GL50 3HF

Report of the Licensing Team Leader

1. Introduction

1.1 According to the application made to the authority, this operator plans to operate the above premises as an adult gaming centre (AGC).

1.2 The application has been made under Section 159 of the Gambling Act 2005 (2005 Act) and the application is attached at ANNEX 1.

1.3 AGC premises licences allow the holder of the licence to make gaming machines available for use on the premises.

1.4 Persons operating an AGC must hold a gaming machines general operating licence from the Gambling Commission (the Commission) and must seek a premises licence from the local licensing authority for the premises concerned.

1.5 A business operating under an AGC premises licence is entitled under the Act to make available for use a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises and any number of category C or D machines.

1.6 The applicant has not specified the hours for trading in their application. However, if the licence is granted section 183 of the Gambling Act 2005 applies a condition to all premises licences that facilities for gambling must not be provided on Christmas day, namely the period of 00.01 hours on 25 December until 00.00 hours on 26 December.

1.7 The applicant has provided supporting documentation to their application as detailed below, and these documents are referenced by the annex numbers provided:-

ANNEX 2 A – Cover letter for application.

ANNEX 2 B – Local Risk Assessment May 2024

ANNEX 2 C – Local Risk Assessment Map

ANNEX 2 D – Social Responsibility Policies and Procedures

ANNEX 2 E – Admiral Professional Development Programme

1.8 The authority must determine the application on the basis of the licensing objectives, namely:-

- **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,**
- **Ensuring that gambling is conducted in a fair and open way, and**

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- **Protecting children and other vulnerable persons from being harmed or exploited by gambling.**

1.9 As provided for by Section 153 of the Gambling Act 2005 (the 2005 Act), in making decisions about premises licences the sub - committee should aim to permit the use of premises for gambling in so far as it thinks it is:-

- In accordance with any relevant code of practice issued by the Commission;
- In accordance with any relevant guidance issued by the Commission;
- Reasonably consistent with the licensing objectives; and
- In accordance with the Authority’s Statement of Licensing Policy.

2. Application

2.1 Application (Ref. 24/00471/ADCAP)

2.2 Applicant: Luxury Leisure.

2.3 Premises: 218 High Street, Cheltenham, GL50 3HF

3. Consultation Process

3.1 The application was advertised in accordance with the Gambling Act 2005 (Premises Licence and Provisional Statement) Regulations 2007 both on the premises and in the local press.

3.2 The 28 day consultation period started from the date the application was received.

3.3 Local residents and businesses could make representations to the Authority within the statutory period.

3.4 The Responsible Authorities were notified of the application and given a copy of the notice of application being made.

3.5 Section 157 of the 2005 Act identifies the bodies that are to be treated as responsible authorities. They are confirmed below:-

- (a) a licensing authority in England and Wales in whose area the premises is wholly or partly situated
- (b) the Gambling Commission
- (c) the chief officer of police or chief constable for the area in which the premises is wholly or partially situated
- (d) the fire and rescue authority for the same area
- (e) in England and Wales, the local planning authority; or in Scotland, the planning authority
- ~~(f) the relevant authority as defined in s.6 of the Police and Fire Reform (Scotland) Act 2012 (opens in new tab)~~
- (g) an authority which has functions in relation to pollution to the environment or harm to human health
- (h) anybody, designated in writing by the licensing authority, as competent to advise about the protection of children from harm
- (i) HM Revenue & Customs

(j) any other person prescribed in regulations by the Secretary of State.

4. Background

4.1 The Licensing Authority must under Section 153(1) of the Act exercise its functions relating to premises licensing with an aim to permit the use of the premises for gambling in so far as it thinks fit and in accordance with the relevant codes of practice, guidance, reasonably consistent with the licensing objectives and in accordance with the Council's Statement of Principles.

4.2 The Licensing Authority can take into account representations relating to an application for a premises licence from either an interested party (a person living sufficiently close to the premises to be likely to be affected by the authorised activity or has a business interest that may be affected or represents persons in either of these two groups) or a responsible authority.

4.3 Any representations must be relevant and not frivolous or vexatious.

4.4 Section 152 of the 2005 Act provides that a premises licence may not be issued in respect of premises if a premises licence already has effect in relation to the premises, except for a track premises licences. The Explanatory Notes for section 152 state "The general position for premises licensing is that premises may only be subject to one premises licence at a time... The effect of this requirement is to limit the principal activity on the premises to the provision of facilities for a particular type of gambling activity."

4.5 Regulations made under the 2005 Act impose mandatory and default conditions that promote the licensing objectives. A list of these Mandatory and Default conditions is attached at ANNEX 4 to this report.

4.6 A premises licence issued by the Authority will be subject to the mandatory and default conditions for that licence type. However, paragraph 9.27 of the guidance states that Section 169 of the Act gives licensing authorities: "The ability to exclude from premises licences any default conditions that have been imposed under Section 168;" and "The power to impose conditions on the premises licences that they issue."

5. Gambling Commission Guidance and Licence Conditions and Codes of Practice (LCCP)

5.1 The Gambling Commission have produced guidance for local authorities in relation to the 2005 Act. The information in this section of the report relates to the relevant points within the Guidance which members may wish to consider.

<https://www.gamblingcommission.gov.uk/guidance/guidance-to-licensing-authorities>

5.2 However this document is lengthy and produced to assist Licensing Authorities and indirectly all parties to an application to understand this legislation, and assist where it is applicable to a specific licence application.

5.3 To assist all parties it is suggested that the following parts of this guidance would appear most relevant to this application, and this may assist in focusing attention on those parts:-

Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 16, 21, 33, 36 and Appendixes A, B, D, F, G, I

5.4 The Committee can, if it feels minded impose conditions on the premises licence.

Paragraph 9.28 of the Guidance states that

"Licensing authorities should make decisions on conditions on a case-by-case basis, and in the context of the principles of s.153. They must aim to permit the use of premises for gambling and so should not attach conditions that limit their use except where it is necessary in accordance with the licensing objectives, the Commission's codes of practice and this guidance, or their own statement of policy."

5.5 The guidance goes further to state that authorities should not turn down applications for premises licences where relevant objections can be dealt with through the use of conditions. If the authority does decide that the only way to address a particular concern is through conditions it must be proportionate to the circumstances which they are seeking to address.

5.6 The guidance encourages licensing authorities to ensure that premises licence conditions are 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, or fairly and reasonably related to the scale and type of the premises and reasonable in all other respects (see paragraph 9.31 of the guidance).

5.7 Local authorities are also prevented from attaching conditions relating to certain matters.

Paragraph 9.32 of the guidance sets out the relevant sections of the 2005 Act where conditions may not be imposed.

“...The relevant sections are:

- s.169(4) prohibits a licensing authority from imposing a condition on a premises licence which makes it impossible to comply with an operating licence condition
- s.172(10) provides that conditions may not relate to gaming machine categories, numbers, or method of operation
- s.170 provides that membership of a club or body cannot be required by attaching a condition to a premises licence (the Act specifically removed the membership requirement for casino and bingo clubs and this provision prevents it being reinstated)
- s.171 prevents a licensing authority imposing conditions in relation to stakes, fees, winnings or prizes.

5.8 A link is provided below for further background in relation to the consideration of this application. The Licence Conditions and Codes of Practice (LCCP) are important points of reference for licensed operators in running their businesses.

<https://www.gamblingcommission.gov.uk/licensees-and-businesses/lccp>

5.9 The LCCP details a great deal in terms of responsibilities for operators and is helpful reading in respect of particular concerns or for reassurance in respect of certain concerns.

5.10 The LCCP details the conditions of operator’s licences and personal licences issued by the Gambling Commission.

6. Licensing Statement of Principles

6.1 The Licensing Authority’s Statement of Principles sets out the council’s policy considerations in relation to applications made under the Gambling Act. The Statement re - emphasises the Authority’s position in relation to Section 153 of the Act and sets out the principles and policies that the Authority will adopt when considering and determining Gambling Act applications. It can be found here in full:

https://www.cheltenham.gov.uk/downloads/file/3298/gambling_statement_of_principles

6.2 Section 5 of Part A discusses Local Risk Assessments and should be considered in determining this application. At 5.2 it states:-

Social Responsibility (SR) code 10.1.1 requires licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and to have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in this policy statement.

6.3 It goes on to state at 5.4 and 5.5:-

5.4 This authority will expect the local risk assessment to consider as a minimum:

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5.4.1 the location of services for children such as schools, playgrounds, leisure/community centres and other areas where children will gather;

5.4.2 the demographics of the area in relation to vulnerable groups;

5.4.3 whether the premises is in an area subject to high levels of crime and/or disorder.

5.4.4 how vulnerable people, including people with gambling dependencies are protected.

5.5 This authority will also expected local risk assessments to include, specifically, any relevant information about:

5.5.1 Self exclusion details

5.5.2 Attempts to gamble by under 18s

5.5.3 Outcome(s) of test purchase results

5.5.4 ASB issues on incident logs

5.5.5 Police reports and call outs

5.5.6 Sharing information with nearby agencies e.g. treatment centres

5.5.7 Any protections in place when footfall is the highest

5.5.8 Details of any best practise schemes such as Betwatch or similar

6.4 The statement also notes at 1.1 and 1.2 of Part B:-

1.1 Premises licences will be subject to the requirements set out in the Act and regulations, as well as specific mandatory and default conditions which will be detailed in regulations issued by the Secretary of State. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

1.2 The authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it is: • in accordance with any relevant code of practice issued by the Commission; • in accordance with any relevant guidance issued by the Commission; • reasonably consistent with the licensing objectives, and • in accordance with the Authority's Statement of Licensing Policy

6.5 The statement also discusses the Licensing Objectives at 1.18 – 1.24:-

1.18 Licensing Objectives - Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, the authority has considered the Commission's guidance and some comments are made below:

1.19 Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime - The authority is aware that the Commission will be taking a leading role in preventing gambling from being a source of crime. The Commission's guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime, the authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. The authority is aware of the difference between disorder and nuisance and will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it, so as to make that distinction.

1.20 Ensuring that gambling is conducted in a fair and open way - The authority has noted that the Commission has stated that it would generally not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way, as this will be addressed via operating and personal licences. There is however, more of a role with regards to tracks which is explained in more detail in the 'tracks' section below.

1.21 Protecting children and other vulnerable persons from being harmed or exploited by gambling - The authority has noted the Commission's guidance that states this objective means preventing children from taking part in gambling (as well as the restriction of advertising so that gambling products are not aimed at, or particularly attractive to children). The authority will therefore consider, as suggested in the guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrance/machines, segregation of areas etc.

1.22 The authority will also make itself aware of the Codes of Practice which the Commission issues as regards this licensing objective.

1.23 As regards the term "vulnerable persons", it is noted that the Commission is not seeking to offer a definition, but states that "it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gamble beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs".

1.24 The authority will consider this licensing objective on a case by case basis. A list of organisations set up to give help and advice about problem gambling is attached at Appendix D.

6.6 It also provides assistance in respect of the potential attachment of conditions to the grant of a licence from 1.25 – 1.33:-

1.25 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.

1.26 Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures The 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. The authority will also expect the licence applicant to offer his/her own suggestions as to the way in which the licensing objectives can be met effectively.

1.27 The authority will 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. These matters are in accordance with the Commission's guidance.

1.28 The authority will also ensure that where category C or above machines are on offer in premises to which children are admitted:

- all such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective in preventing access other than through a designated entrance;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;

- the area where these machines are located is arranged so that it can be observed by the staff of the licence holder; and*
- at the entrance to and inside any such areas, there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.*

1.29 These considerations will apply to premises including buildings where multiple premises licences are applicable.

1.30 The authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Commission’s guidance, the authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

1.31 It is noted that there are conditions which the authority cannot attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition;*
- conditions relating to gaming machine categories, numbers, or method of operation;*
- conditions which provide that membership of a club or body be required (the Act specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and*
- conditions in relation to stakes, fees, winning or prizes.*

1.32 Door Supervisors - The Commission advises in its guidance that if a Council is concerned that a premises may attract disorder, or be subject to attempts at unauthorised access (for example by children and young persons), it may require that the entrances to the premises are controlled by a door supervisor and is entitled to impose a premises licence condition to this effect.

1.33 Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be SIA licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary.

6.7 Section 2 of Part B discusses Adult Gaming Centres specifically:-

2.1 The authority will specifically have regard to the need to protect children and vulnerable persons from harm, or being exploited by gambling and will expect the applicant to satisfy The authority that there will be sufficient measures to, for example, ensure that under 18 year olds do not have access to the premises.

2.2 The authority may consider measures to meet the licensing objectives such as:

- Proof of age schemes*
- CCTV*
- Supervision of entrances/machine areas*
- Physical separation of areas*
- Location of entry*
- Notices/signage*
- Specific opening hours*

Self-exclusion schemes

Provision of information leaflets/helpline numbers for organisations such as GamCare.

2.3 This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

7. Responsible Authorities

7.1 No representations were received from any of the statutory responsible authorities.

7.2 Comments were received from the Environmental Health team, which are not deemed as relevant representations in respect of the licensing objectives, but have been passed to the applicant.

7.3 Moreover the Planning Team have advised of the current hours attached to the planning approval for the premises. However, Members should not consider these hours in their decision making, as a venue operator must comply with both any planning restrictions and any licence approval under the Gambling Act 2005, if that is forthcoming.

7.4 The Licensing Authority should consider this application on the merits or otherwise of the application and determine it independently of the planning hours approved.

8. Interested Parties

8.1 Four representations have been received from interested parties. These are attached at ANNEXES 3 A and 3 B of this report. The representation at ANNEX 3 B is accompanied by supporting information at TABs 1 – 10.

9. Options for the sub - committee

9.1 When determining the application the Committee will need to consider the Gambling Act 2005 (including the licensing objectives, the relevant Guidance to Licensing Authorities and the Council's Statement of Principles.

9.2 The sub – committee may:-

a) Grant the application, as per the application with mandatory conditions attached, or

b) Grant the application with mandatory conditions and any conditions the panel believe are necessary to promote the licensing objectives and are proportionate, or

c) Refuse the application.

9.3 Members need to be satisfied that if the application were to be granted there would be no breach of mandatory conditions and the granting of the application would not have a detrimental impact on the licensing objectives.

9.4 If Members are minded to attach conditions they must consider section 6.6 and 6.7 of this report, along with all relevant elements of the Gambling Commission Guidance and LCCP, along with the authority's policy.

10. Public sector equality duty

10.1 The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary, section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:-

(a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;

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(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

(c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Background Papers

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