

Licensing Sub-Committee – 26 November 2010

Minutes of the meeting of the **Licensing Sub-Committee** held on **26 November 2010** when there were present:-

Cllr M Hoy
Cllr K H Hudson

Cllr M Maddocks

ALSO PRESENT

Cllr Mrs B J Wilkins

OFFICERS PRESENT

A Law - Solicitor
P Nellies - Licensing Officer
S Worthington - Committee Administrator

102 APPOINTMENT OF CHAIRMAN

Cllr K H Hudson was appointed Chairman of the Sub-Committee.

103 PROCEDURE FOR LICENSING HEARING

The Sub-Committee noted the procedure to be followed during the hearing.

104 LICENSING APPLICATION – GAMBLING ACT 2005

Star Amusements Ltd, 10 Eastwood Road, Rayleigh

The Sub-Committee considered an application for the grant of a Betting Premises Licence made under section 159 of the Gambling Act 2005. The application related to a premises known as Star Amusements Ltd, 10 Eastwood Road, Rayleigh, SS6 7JQ. Members had before them the report of the Head of Environmental Services setting out the details of the application and the representations received from various interested parties, including further bundles of documents from the applicants, one interested party, Gala Coral, and one Responsible Authority, the Gambling Commission.

In response to an enquiry relating to the final page of appendix D to the officer's report, the Council's Licensing Officer confirmed that the final sentence was not an extract from the Council's Statement of Licensing Policy, but was an officer opinion.

In presenting the application, the applicants' representative, Mr Etchells, advised that Star Amusements was a family-owned business that had been operating adult gaming businesses for some time. They were, however, relatively new to the betting business, although were very aware of their obligations. They already operated adult gaming/betting businesses in Canvey Island, South Benfleet, Leigh-on-Sea, Brentwood and Southend-on-Sea. The application proposed a reduction in size of the adult gaming centre

at 10 Eastwood Road, Rayleigh and using the remainder of the ground floor building for a betting premises, to be open between the hours of 0700 to 2200 daily.

Mr Etchells advised of a correction to the officer's report relating to the partitioning proposed to separate the betting and adult gaming centre areas. The partitioning would consist of a screen made of safety glass, similar to that used in shop fronts. He confirmed that customers would enter the premises via the main doors into a lobby, or 'sterile area', separated from the proposed betting area and adult gaming centre by means of the glass screen. There were no doors proposed into these two separate areas.

The applicants proposed to offer an over the counter betting facility, a betting terminal and 2 high value stake gaming machines in the separate betting area. The premises would be permanently staffed, run along similar lines to other similar premises owned by the applicants.

Mr Etchells emphasised that the second sentence of the second paragraph of the letter set out in page 4.17 of the officer's report was not relevant to this particular application. He also stressed that the final sentence on page 4.19 of the officer's report indicated that the Council should not take into account the anticipated demand for the proposed betting facility.

Mr Etchells made particular reference to the fact that the final sentence on page 4.12 of the officer's report should not be included in the evidence to be considered by the Sub-Committee as it was not relevant to this particular application. He believed that it was improper for the Gambling Commission to have included this in its representation, as it could potentially prejudice proceedings.

With respect to paragraph five on page 4.13 of the officer's report, Mr Etchells confirmed that there would be two separate premises licences; these would be for two different parts of the same building, separated by the proposed glass screen. He emphasised that, according to the Gambling Act 2005 Regulations, 'street' was defined 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 was to allow access, for example, to casinos from hotel foyers. He stressed that this broad definition of 'street' applied to the application's unlicensed lobby area, which could be said to form a 'street' or 'sterile area'.

He reiterated that Star Amusements had all their premises divided into different areas. This application would be no different and these premises would, he claimed, be permanently separated. He stressed that the application complied with paragraphs 3.5 and 3.6 of the Council's Statement of Licensing Policy; children under the age of 18 would not be admitted into the premises from the street. He further emphasised that paragraph 7.18 of the Gambling Commission's guidance for Local Authorities, detailed on page 4.15 of the officer's report, should be considered in the light of the Gambling

Act 2005 Regulations' broad definition of 'premises' and 'street'. He stressed that item b) was not relevant, as it would appear to preclude the same person owning separate buildings located next to one another. He pointed out that item c) was satisfied, if the broad definition of 'street' was accepted with respect to this premises. The concerns of item d) would be addressed by the fact that the application proposed access to the different licensed areas via an unlicensed lobby.

Mr Etchells claimed that the assertion made by the Gambling Commission in point 8 on page 4.13 of the officer's report was unjustified, particularly in light of the Gambling Commission's published licence conditions and codes of practice, as detailed on page 4.25 of the agenda, which refers to the fact 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, rather than a full range of betting facilities. He emphasised that the proposed betting area would contain only two gaming machines; all other facilities would be for betting. The applicants' intention was to provide a separate area for which betting would be the primary activity; the applicants could not, however, be expected to anticipate what the likely commercial take-up of that activity might be.

Mr Etchells concluded by emphasising that the applicants would comply with the Gambling Commission's codes and would promote all activities offered at the premises. Their proposal was for an arrangement that was commonplace around the country. They did not consider that there was any substance to the representation made by the Gambling Commission.

In response to questions the following was noted:-

- The glass screen was chosen to enable services, eg, air conditioning, to operate in the whole building; a floor to ceiling wall would require a different air conditioning system.
- There will be one entrance from the street to the premises; the partition allows customers to access either the adult gaming centre or the betting area.
- The premises had not been separately rated, but this would be finalised in due course.
- The premises at 10 Eastwood Road would be viewed by members of the public as a single premises from the street, however this was not relevant. It was the definition of a premises within the Gambling Act 2005 that was relevant.
- Post for the two different areas would go to the same address. It was not, however, relevant for the purposes of the Gambling Act 2005 that each area of the premises shared the same post code.

- The premises would not be artificially sub-divided; the proposal was consistent with similar arrangements around the country, that were compliant with the Gambling Act 2005.
- When the front doors to the building are closed all those within the building would have access to the 'sterile area'.
- Betting activities would include the placing of bets on events, including football and horse racing; betting slips would be issued. Betting would be the primary activity in the betting area.
- Cannot advise as to what the likely turnover for betting would be.
- If the premises licence was to be granted for the betting area, two B2 gaming machines would be installed in that area.
- The sterile area will contain advertising for both activities.
- The screen will have a 4 to 6 inch gap at the top and bottom; it is a framed screen, with glazed panels.

Ms Trimble, on behalf of the Gambling Commission, advised that the Gambling Commission was concerned that the proposed separation was an artificial one with the purpose of putting in 2 high value gaming machines. She further emphasised that the Commission believed it possible that the applicants would not be able to offer the full range of facilities for betting that the Commission would expect to be provided as the primary licensed activity in betting premises.

Ms Trimble said that the proposed access arrangements meant that customers entering the premises from the pavement would emerge into a small carpeted area with no doors, which in turn meant that they would be able to drift to either of the 2 licensed areas. There was only one true entrance, accordingly it was one premises and not two, as claimed by the applicants. She further emphasised that there was only one rateable value for the premises and remarked that other premises operated by the applicants where they had separate areas, were operating with a single rateable value.

She refuted the applicants' claim that the 'sterile area' constituted a street. The broad definition of 'street' within the Gambling Act was specifically aimed at shopping malls or hotels with lots of different areas and large floor spaces. In this particular instance, however, customers would come into contact, immediately on entering the premises, with harmful, high value gaming machines, which was a harder form of gambling than posed by the machines currently on site. In the Commission's view there should only be one premises licence for a single premises in order to stop the proliferation of high stake gaming machines.

Ms Trimble emphasised that the size of the proposed betting area indicated

that the betting facilities on offer would be minimal. She further stressed that on Saturday afternoons, for example, one customer could be on the betting terminal at some length, which would mean that there would not be betting information available to other customers. This, she claimed, illustrated the artificial nature of the application. In addition, she expressed concern at the advertising on the front of Star's premises that referred to 'amusements'.

Ms Trimble stated that the transparency of the screen, with its clear gap top and bottom highlighted its artificial nature and allowed staff to be shared between the two different licensed areas. Ms Trimble stressed that there was one kitchen and one toilet at the premises. It would therefore seem reasonable to assume that staff would have to leave the betting area un-manned if they had to visit the kitchen or toilet.

Ms Trimble questioned Mr Enright, who was employed by the Gambling Commission, on visits he had made to one of Star's other premises in Leigh-on-Sea and to the actual application premises in Rayleigh on 8 November. He confirmed that the premises in Leigh-on-Sea had a betting terminal, a counter with a till system, a back office system and safe cash handling. There was very little room for customers; the area was around 2m wide and 6m long. It appeared to be designed more for customers of the 2 high stake gaming machines also placed in this area than for betting customers; as it was too small for customers to remain and bet in comfort. He confirmed that, irrespective of any broad definition of 'street', there was not a separate entrance from the street for both activities and the 'sterile area' was only 1m².

He confirmed that Star's total gross profits within a 12-month period for 4 betting premises were only £501, before tax and staff costs. He had requested from Star a return showing profits from the high stake gaming machines at these 4 premises during the same 12-month period, and was still waiting this information.

He advised that at Star's Leigh premises there was only one member of staff on duty covering the betting area, the adult gaming centre and the café. This was a staffing arrangement operated at other similar Star premises. It could, however, result in betting or adult gaming centres being un-staffed if that member of staff had to visit the kitchen or toilet facilities; anyone could also access these areas from the street at such times, as there were no doors separating access to the licensed areas.

In response to questions, the following was noted:-

- The Gambling Commission has received notification of several applications to divide buildings into separate premises.
- The Commission made no contact with the applicants in advance of making a representation with respect to this application.

- Mr Enright confirmed that his visit to the Rayleigh premises on 8 November was with a view to assessing whether or not the Commission's representation might be withdrawn or whether it should still stand.
- The bullet points listed at paragraph 7.18 of page 4.15 of the officer's report were indicators.
- There was no minimum size required for premises.
- There was no requirement that customers at betting premises be comfortable or provided with furniture.
- The Code of Practice, as set out on page 4.26 of the officer's report, sets out the general factors for demonstrating that the primary gambling activity for which an operating licence has been issued is being offered in each licensed premises.
- Over the same 12-month period for which financial returns had been provided for betting operations at the 4 Star premises referred to above, just under 260 bets were placed at the 4 premises in total.

Mr Woods, on behalf of Gala Coral Group, stated that it was unusual to see the Gambling Commission objecting to a gambling application, given that they were the regulatory body for gambling. Gala Coral did not consider that this application was in accordance with the Gambling Act 2005 or with Gambling Commission guidance and furthermore did not agree with the applicants' interpretation of Gambling Commission guidance.

Mr Woods stated that there had been many applications for betting premises licences since 2007 and Gala Coral rarely objected to such applications. Gala Coral contend that the proposal would result in an artificial separation of the premises; there is, however, only one premises, served by the same systems and with one toilet. He stressed that the 1m² 'sterile area' could not be accurately defined as a 'street'. In his view, a shopping mall, such as Lakeside, could be defined as a 'street' within the Act. He emphasised that the figures provided to the Gambling Commission by Star showing the usage of their other 4 premises clearly indicated that the take-up of betting at these similar premises was minimal, at around 1.5 bets per week per shop. This would not provide evidence of betting being the primary use. They therefore claimed that the proposed separation of the Rayleigh premises was with the aim of introducing high stake gaming machines.

In response to questions, the following was noted:-

- Gala Coral considered that the applicants were applying for a premises licence that would not be compliant with the Gambling Act 2005.

- There are occasions when there is a single member of staff on duty at Gala Coral's Eastwood premises.
- It was not possible to accurately say what the split of income was between gaming machines and the betting counter at Gala Coral's Eastwood premises, but it could be approximately a 50:50 split.

In her summing up for the Gambling Commission, Ms Trimble reiterated that the shop fascia refers to amusements; the reference to betting on the shop front is much less prominent. Evidence from other similar Star premises clearly demonstrates that the primary use of the premises is for adult gaming machines, rather than betting. She stressed that this was one premises requiring only one licence. She reiterated that the 'sterile area' could not be deemed a street; the premises had one mailing address, one rateable value and one owner.

Visits to the Eastwood Road and other similar Star premises clearly highlighted that the primary use of the premises was for gaming machines. Betting use was very minimal, with staff deployed across both activity areas. This in turn gave the Commission cause for concern in terms of protecting vulnerable people and children as there was a risk, given the limited staffing and lack of separate doors to the licensed areas, that there could be occasions when there would be no supervision with respect to entry to the premises and licensed areas.

In conclusion Mr Etchells, on behalf of the applicants, said that the barrier proposed was a fixed, rather than temporary one, in accepted use elsewhere. He further stressed that Gala Coral sub-divide their bingo halls and put in adult gaming machines. The definition of 'street' within the Act, he claimed, does not require a premises to have walls; these are, he reiterated, separate premises requiring separate licensing. He advised that the types of machines for this premises would vary from those currently in place, B3 machines, which required a £1 stake for a maximum £500 prize, to two B2 machines, which required a maximum £100 stake for a maximum jackpot of £500.

He did not believe that the income from different licensable activities was an accurate test for primary use of a licensed premises. He stated that at Star's Leigh-on-Sea premises the café only had four seats, located in the adult gaming centre. No-one under the age of 18 years had managed to gain access to any of Star's premises.

The Sub-Committee retired from the Chamber with the Legal and Committee officers to consider the decision, returning for its announcement.

Having given careful consideration to the application, to all evidence presented, including the additional documents provided by all parties, the Committee decided to reject the application made by Star Amusements Ltd for the following reasons:-

1. The proposed glass barrier with air gaps is insufficient to create separate premises for betting, as required by the Gambling Act 2005 and associated regulations. The barrier proposed has the appearance and characteristics of a glass screen, with gaps of 4 to 6 inches at the top and bottom. It is clear that the premises will have shared facilities including, for example, air conditioning. In addition, the two areas share the same front doors; there are no further doors separating the two areas beyond the 'sterile area'. These factors are all indicative that the areas will not constitute two premises, requiring separate licences. The proposal would result in an artificially created space and the grant of a further licence would therefore contravene Section 152 of the Gambling Act 2005.
2. The Sub-Committee has considered all arguments regarding the definition of the term 'street' in the Gambling Act 2005 (Mandatory and Default Conditions) Regulations 2007 and does not agree that the 1m² 'sterile area' constitutes a 'street', as defined by the Regulations. This application does not accord with the relevant access provisions for betting shops contained within the 2007 Regulations.
3. The Sub-Committee has not been convinced, with respect to the creation of a separate area for betting, that the primary activity will be for betting, rather than simply an extension of the current adult gaming centre. This application thus is in contravention of Section 150(e) of the Gambling Act 2005.
4. The Sub-Committee does not believe that this application contains reasonable measures to comply with the third licensing objective of protecting children and other vulnerable persons from being harmed or exploited by gambling.

Resolved

That the application be rejected. (HES)

The meeting commenced at 10.00 am and closed at 2.15 pm.

Chairman

Date

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