



Haringey Council

## Briefing paper for Members of the Regulatory Committee on the Paddy Power Appeal Hearing against LBH.

The hearing took place over two days in November 2014 at the Highbury Magistrates Court and was presided over by DJ Williams.

### **POWER LEISURE BOOKMAKERS LTD.**

v.

### **LONDON BOROUGH OF HARINGEY**

#### Background to the Appeal

This briefing explains the consideration undertaken by District Judge Williams in the appeal against the refusal by the Council to grant a licence for a Betting Shop at 606 Lordship Lane Haringey. The premises are situated on the corner of Lordship Lane and Dunbar Road having formerly been run as a public house, known as “the Lordship”. The licensing committee stated in its reasons for its decision that it had had regard to the relevant codes of practice, the statutory guidance, the local authority’s own statement of gambling policy and the statements made by interested parties, some of whom gave oral evidence before the Judge Williams at the appeal.

The statutory guidance makes it clear that the Licensing Authority must “aim to permit” the granting of such a licence, having regard, of course to the licensing objectives. The local authority’s concern focussed on the question of crime and disorder in this location. The Council had decided that the grant of a licence to a proposed third betting shop along this stretch of Lordship Lane, was “very likely” to cause issues of crime and disorder, connected to another betting shop in the vicinity. The Council also concluded that those issues “would arise in respect of the premises subject of this application”. There was no evidence to this effect from the police, who did not oppose the application, and the police have not opposed the appeal against its refusal by the Licensing Committee.

The Council’s evaluation of the evidence it heard led to the conclusion that there were incidents of crime and disorder at the location, which went beyond “mere nuisance”. The Council considered that those incidents amounted to “harassment, alarm and distress” and therefore, passed the threshold of crime and disorder. In accordance with the council’s policy on gambling, crime and disorder are matters to which the local authority pays “particular attention”. In the view of the Council, no conditions attached to the grant of any licence to PaddyPower “would be sufficient to be reasonably consistent with” safeguarding against crime and disorder at this location. The Judge noted that the Council gave no reasons why it had come to this conclusion in its decision notice. The Judge however took the view that the conditions inserted by way of a representation from the Licensing officer was significant for 2 reasons: the police did not oppose the grant of the licence; when there was a “spike” in crime and disorder at this location “intensive targeted policing” had “remedied” the situation (according to the local SNT Officer in an email sent in January 2014.)

Paddy Powers case against the Council was that the Council had failed to ask the essential questions, consistent with the licensing objectives:

- i). what is the source of the crime and disorder?
- ii). is it associated with gambling in the location?
- iii). is gambling being used to support crime and disorder?

Section 153 Gambling Act 2005 sets out the principles to be applied:

**153(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—**

**c). reasonably consistent with the licensing objectives**

**(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.**

There is a presumption in favour of the grant of a licence. Reasonable consistency with the licensing objectives is required. Those objectives include; preventing gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime.

The Council's concern in refusing the license was based on the issue of crime and disorder at the location. The Council considered whether these concerns could be met by the imposition of conditions attached to the grant of a licence. The decision was that: "the evidence of issues and challenges with this particular location were such as not to consider this viable." This was the sole reason given for the refusal of the licence.

The Judge stated that the Council clearly considered the impact on the residents in this community given the concerns expressed at the initial hearing when reaching its decision and the evidence of those residents, whose statements were also given in evidence for the court case and two residents attended to give evidence of their concerns should the appeal be allowed. The Judge had the task of considering those concerns and the appeal within the frame work of the licensing objectives.

### **Paddy Powers Case:**

Paddy Powers development manager said should the appeal succeed, their focus would be on security, not only for staff, but also for the customers, who would be using the premises. The staff training manual is audited by the Gambling Commission once a year and that all the staff receive regular training, including refresher training every year.

Mr. Butterworth, a self employed Licensing and Security Authority Compliance consultant gave evidence about observations he had carried out at the location. Previously Mr. Butterworth had worked for 30 years for Greater Manchester Police, including 8 years as a force Licensing Inspector, which duties included managing a covert licensing unit. His evidence of the observations he made at the location were, therefore, carried out with an experienced eye. Between Saturday 26<sup>th</sup> April and Tuesday 29<sup>th</sup> April Mr. Butterworth lived in Haringey in order to carry out those observations.

He described in his evidence that Saturday afternoon is the peak time for business in a betting shop. He, therefore, began his observations on a Saturday starting at 2.00p.m. and finishing at 8.00 p.m. It is significant, in the Judges view, that Mr Butterworth saw none of the conduct referred to in letters of representation made by the residents to the Council. He concentrated his attention on the area around Acacia Road as this was the area where most concern had been expressed. He observed one suspected drug deal, but this was carried

out near Tesco Express (in Winkfield Road) and not in the immediate vicinity of either the premises of William Hill or Ladbrokes or at the location subject to this appeal. He did note a number of street drinkers in Chapman's Park, again there was no link between their activities and the gambling taking place in the area. He did observe activities about which residents had complained in their representations: street begging, litter, and urination. The litter came from patrons of the fast food shops discarding wrapping from the food they had bought, the begging and urination was not linked to activity at the existing betting shops. With regard to groups gathering on street corners he saw groups of 1-3, smoking outside the betting shops, and larger groups of up to 7 only on rare occasions. Outside William Hill he saw 2 individuals carrying bottles, but only 1 drinking from a bottle. He saw no groups gathering on the corner outside the "Lordship". He noted that it was very rare for someone to come out of one of the betting shops to smoke after 8.00p.m. He did not consider, from what he observed, that a person of reasonable firmness would have been intimidated by groups outside the betting offices.

Mr. Butterworth carried out further observations on Friday 29<sup>th</sup> August and Saturday 30<sup>th</sup> August between 3.00p.m. and 10.00p.m. and between 12.20p.m. and 6.30p.m., respectively. During this time he saw no evidence of misconduct that "came anywhere near to becoming a breach of the Gambling Objectives." None of the smokers he observed were connected to William Hill or Ladbrokes. None of those he observed made disparaging remarks to any passer by. This evidence was not challenged by the Respondent.

The final witness to give evidence for the Appellant was Mr. McGowan, a resident of Lordship Lane for 20 years. Mr. McGowan became involved in this application when a local organisation, of which he is a member, sent him an e mail asking for evidence of anti social behaviour outside 2 local betting shops. Mr. McGowan's concern was that a former public house, that had been empty for a year, was likely to be a cause of concern by virtue of the fact that it was an empty building. He had received this e mail in April 2014. The e mail had referred specifically to anti social behaviour. Mr. McGowan gave evidence that during the 20 years he has lived in the area, neither of the 2 existing betting shops had bred any crime in the area nor had the cab office opposite William Hill. Unlike other witnesses called on behalf of the Council, he had never seen anyone outside the betting shops cat calling at passing women or behaving in a sexually intimidating way towards them. Had he observed behaviour of that sort, he would, as the father of daughters, have noted it. He had seen no evidence of "kerb crawling" or drug dealing. In his experience, the worst anti social behaviour occurs at the bus stop. In daily trips to and from where he parked his car, and during his daily exercise, walking or jogging, he had not noticed any behaviour connected to the 2 existing betting shops that had given him cause for concern. He frankly described being attacked at knifepoint, which occurred "a few hundred yards past Tesco's". He referred to his wife, a lady of petite stature, having had her handbag stolen on 2 occasions, but both times this had occurred opposite the local Crown Court. He said that where groups do tend to congregate, is outside the barbers. He had seen interchanges between groups outside the cab office and those outside William Hill. He had noted however, that those outside William Hill were cab drivers waiting for jobs. Those interchanges had been friendly and not aggressive. He regarded the betting shops as being of neutral value to the area. Mr. McGowan gave an accurate and unvarnished view of life as a resident in this area, which the Judge found compelling and persuasive.

### **The Council's Case:**

The Council's case consisted of written representations and statements, as well as live evidence from 2 local residents.

Miss Boyle a resident of Perth Road made written representations to the Council by e-mail in March 2014. Her concerns refer to groups of men outside William Hill making sexually

suggestive and offensive remarks directed at young women. These she described in her e mail to the council as: 'casual harassment of passing women'. This had been her observation of men loitering outside William Hill and not outside Ladbrokes. She had also seen one man on one occasion finish off a small bottle of vodka, throwing it away before entering William Hill. The man concerned had been in the doorway of William Hill. She accepted in cross examination that this had not been an aggressive act but felt was more an issue for the council than for the police. In the judges view causing litter may well be anti social and a nuisance, but does not amount to disorderly conduct in her judgement. Ms Boyle accepted this view on cross examination also.

Miss Scott-Mason attended the committee meeting and made representations to the Council. Miss Scott-Mason lives in Dunbar Road. In her evidence to the Judge she said that she walked along Dunbar Road to Lordship Lane at least once a day when she is in London. She has been the target of aggressive beggars "around William Hill". She was unable to say whether the beggars themselves went into William Hill or were connected in any way to gambling at those premises. As a young mother in the area she had been concerned by the large gangs of men who hang around outside William Hill. These men had made sexually explicit remarks to her, and she had seen these men going into William Hill, then coming out and loitering outside. She had also seen cannabis being smoked outside William Hill. It had not occurred to her to contact the Safer Neighbourhood team about these matters.

The Judge also considered with some care an e mail from the local SNT Sgt in response questions raised by Miss Boyle, in which he described a "spike in anti social behaviour" during 2013, which was resolved following: " a few weeks of targeted policing" . The Judge noted that he was quite clear in that e mail that the staff at the betting shops had been most co-operative with the police. The Judge took the view that had there been any continuing concerns about disorderly behaviour, the police would have opposed the grant of this licence. The fact that they have not done so, when the concerns of local residents had obviously been drawn to their attention, was significant in her view.

### **The Judges Decision:**

Having considered all the evidence in this case the Judge reached the following conclusions:

- i). that a group of men does tend to loiter outside the premises of William Hill and outside the premises of the mini cab office opposite William Hill;
- ii). those men consist of drivers from the cab office waiting for work, who stand outside smoking;
- iii). groups of men also gather, from time to time, outside the barber's, "Kenny's"; that group has sometimes behaved in an anti social way;
- iv). some drug dealing may have occurred outside Tesco's;
- v). no acts of anti social behaviour or disorder were associated with Ladbroke's, a little further down Lordship Lane;
- vi). some drug dealing or smoking of cannabis does take place in the area but it is not directly connected to gambling at either of the existing premises;
- vii). there are some street drinkers in the area but they are largely confined to Chapman's Park and are not connected to gambling at either of the existing premises;

viii). a “spike” in anti social behaviour noted by the police during 2013, was dealt with by intensive intervention by them and had been resolved before the application for the licence was made;

ix). the police have made no representations, either to the council, or at this appeal, expressing concerns about anti social behaviour, criminal activity or disorder connected to gambling in the area;

x). I find that there is no connection between the men who have made sexually offensive remarks to the witnesses in this appeal and gambling at either William Hill or Ladbrokes;

xi). there may be a fine line between acts of disorder and offensive sexual remarks made towards young women; vulgar and crude though these remarks undoubtedly were. The remarks which I am sure were made, were distasteful, but would rarely in my view, give rise to a prosecution for an offence under the Public Order Act nor could they be said to amount to “disorderly” conduct in themselves. I am further satisfied that there was no connection between these remarks and gambling at either William Hill or Ladbrokes;

xii) I find that the comprehensive list of conditions to be attached to the grant of any licence suggested by the Appellant, would provide sufficient safe guards against the risk of crime or disorder and thereby ensure that the premises would be run in an efficient and orderly way.

I remind myself that this appeal is a re-hearing of the decision taken by the Respondent. My decision is based upon all the documents that have been placed before me by both parties. Not every resident who objected to the grant of this licence had testified before me but their representations are contained in the documents that have been placed before me and I have considered them together with the oral evidence that I have heard. The decision of the Respondent is not one which should be lightly reversed. I should do so only if I am satisfied that the decision was wrong. (See *Stepney BC v. Joffe* [1949] 1K.B. 599). I have had regard to the reasons given by the Respondent when the licence was refused, namely:

i). that crime and disorder committed *by customers* of betting shops in the area *is* a sufficient link to the activity of gambling;

ii). that there was clear evidence of behaviour that passed the threshold of disorder, being more than mere nuisance;

iii). that the impact on the area, were the licence to be granted, would lead to an increase in such disorder;

iv). that conditions on the licence would be insufficient to safeguard against such a risk.

I remind myself that the Appellant bears the burden of persuading me that the Respondent ought to have exercised its discretion differently (see *R.(Hope and Glory Public House) v. Westminster CC* [2011] EWCA Civ. 31. I have had regard to the licensing objectives in section 1 of the Gambling Act 2005. Having regard to all the evidence that has been put before me I am satisfied that there is *no* connection between acts of crime or disorder in this area and gambling. I do not consider that the grant of a licence to the Appellant would lead to such acts of crime and disorder. Since there has been crime in the area and previous acts of anti social behaviour, although not connected to gambling, I do consider that the list of conditions proposed by the Appellant should be attached to the licence to ensure that the premises are run in an efficient and orderly way. The conditions to be attached to the licence are as proposed by the Respondent in their letter to the Appellant dated 19<sup>th</sup> March 2014. To that extent, and for those reasons, this Appeal is allowed.”

A separate hearing took place on Friday 30th January 2015 to enable the matter of costs to be determined.

Mr. Gouriet QC made an application for Paddy Power's full costs of £49K. After fairly lengthy submissions by both sides the DJ gave judgment on costs and decided to follow the default position in *Bradford v Booth* and award no costs. She had come to a different conclusion from the Council on the facts of the case and did consider that there was a fine line between disorder and some of the sexual remarks which had been made. This was a very difficult decision for the Local Authority to make in her view. There was a great deal of disquiet in the community about the application. There were men outside William Hill. Based on her findings of fact she felt that the Councillors had acted honestly and reasonably in coming to their conclusion to refuse the application initially. It is right for the Council to have regard to the voice of its residents who had made over 100 representations against this application.

As to the offer which was made to settle the appeal after the evidence had been exchanged, the DJ did accept that the Council was in a difficult position. There were a very large number of complaints by the local community. It would have been very difficult for the Council to agree a compromise in those circumstances, The Council were correct in continuing to defend the appeal and allowing the Courts to decide on the matter.

It was therefore not appropriate to award costs against the Council in this case applying *Bradford v Booth*. The Council were acting in its public interest role and should not be burdened with a financial levy for acting in an honest and reasonable way.

It is important for the Regulatory committee to note that in making the application for costs, Mr. Gouriet referred to a Councillor from the Committee who had approached him after the hearing in the car park and stated how sorry he was of the decision and that he felt that the application should have been granted. Although we objected to this evidence going in, the DJ heard it. The point is that the remarks of Councillor did make it difficult for us on costs. Although such remarks are not made by the Committee, they can be mentioned in court and can put the Council in a difficult position.

It is therefore important that members who serve on the Licensing Sub Committees bear in mind any actions that could jeopardise the Councils position.