

Report for: **Licensing Sub Committee 28th July 2021**

Item number:

Title: Determination of Application for a Premises Licence for an Adult Gaming Centre Licence for Luxury Leisure T/A Admiral, 513 Green Lanes, London N4

Report authorised by : Director of Community and Environment.

Lead Officer: **Daliah Barrett – Licensing Team Leader**

Ward(s) affected: **Green Lanes**

Report for Key/

Non Key Decision: **Non key**

1. Describe the issue under consideration

The purpose of this report is to advise the Sub-Committee that an application has been received for a Premises Licence, (Adult Gaming Centre) under the Gambling Act 2005 ("the Act"). The application has drawn representations from responsible authorities and interested parties, therefore a hearing is required.

2 Principles to be applied:

This application must be considered under the three licensing objectives:

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

2. Recommendations

The Sub-Committee is asked to determine whether to grant the application for an Adult Gaming Centre Premises Licence at 513 Green Lanes London N4. The application is submitted by Luxury Leisure .

A copy of the application for the premises licence and accompanying documentation that the applicant submitted with their application is at **App1**.

- 2.1 On considering an application for a premises licence (whether at a hearing or not) a licensing authority shall
- (A) Grant it or
 - (B) Reject it.
- 2.2 A Licensing Authority shall not determine an application for a premises licence made in reliance on section 159(3)(b) until the relevant operating licence has been issued in a form which authorises the applicant to carry on the activity in respect of which the premises licence is sought.

3. Reasons for decision

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 the 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))

- 4.2 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.

4. Alternative options considered

None

5. Background information

- 5.1 This report concerns an application made under section 159 of the Gambling Act 2005 (the Act) by Luxury Leisure for a Premises Licence (Adult Gaming Centre) at 513 Green Lanes, London N4.

- 5.2 An application for a premises licence may only be made by a person who:
- Holds an operating licence which authorises him to carry on the activity in respect of which the premises licence is sought and
 - Who has a right to occupy the premises to which the application relates.

- 5.3 An Adult Gaming Centre (AGC) premises licence authorises a premises to be used for making available Category B, C and D gaming machines. An AGC premises licence may make available for use a number of Category B machines not exceeding 20% of the total number of gaming machines that are available at the premises and any number of Category C or D machines. Category B machines should be restricted to sub category B3 or B4 machines but not B3A machines.

- 5.4 Taken from the Gambling Commission Guidance to Local Authorities, attached at **Appendix 2** is the Summary of Machine Provisions by premises.

- 5.6 Attached at **Appendix 3** is Part 9 from the Gambling Commission Guidance to Local Authorities which concerns Premises Licence conditions.

- 5.7 Attached at Appendix 4 is Part 21 from the Gambling Commission Guidance to Local Authorities which concerns Adult Gaming Centres and this also includes the Mandatory conditions that would automatically be attached to an Adult Gaming Centre Premises Licence, if granted. Some types of gambling

premises licence also have default conditions attached to them but there are currently no default conditions specific to Adult Gaming Centres.

- 5.8 Attached at **Appendix 5** is a copy of the Councils Statment of Gambling Policy and the Local Area Profile which is made reference to by the applicant in their risk assessment.

6. Relevant representations

- 6.1 A responsible authority (the Licensing Authority) & interested parties have made representations on this application and copies are attached at **Appendix 6**.
- 6.2 An interested party is defined in the Gambling Act 2005 as someone who –
- lives sufficiently close to the premises to be likely to be affected by the authorised activities
 - has business interests that might be affected by the authorised activities
 - represents persons in either of these two groups.
- 6.3 The applicant has been provided with a copy of the representations made and both the applicant and those making representations have been made aware of the date, time and details of joining the Sub Committee hearing.
- 6.4 The representations raise concerns about the following licensing objectives:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
 - protecting children and other vulnerable persons from being harmed or exploited by gambling
- 6.5 The Metropolitan Police made representation which is attached at App 6 but this matter has now been withdrawn subject to agreement reached on the revised conditions shown at **App 6A**. The applicants also reached out to the other parties to inform of the agreed conditions with the and to ask if they would consider their own original representation, these representations remain outstanding.

7 Legal implications

- 7.1 The Section 153 of the Gambling Act 2005, provides that in determining applications the licensing authority shall aim to permit the use of the premises for gambling in so far as it thinks it is–
- (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)).

7.2 A copy of the Gambling Commission's sector specific Conditions and Codes of Practice applicable to Adult Gaming Centres can be seen at **Appendix 4**.

7.3 The latest version of the Gambling Commission's Guidance to Licensing Authorities is available on line at :-

<https://www.gamblingcommission.gov.uk/PDF/GLA5.pdf>

Parts 1 (General), 9 (Premises licence conditions) and 21 (Adult Gaming Centres) are relevant to this application.

7.4 A copy of the Council's Statement of Gambling Policy, published in accordance with section 349 of the Gambling Act 2005 can be seen at **Appendix 5**.

8 Determination

8.1 Where a licensing authority grants or reject an application for a premises licence, they shall as soon as is reasonably practicable give notice to –

- The applicant
- The Gambling Commission
- Any person who made representations about the application
- The Chief Officer of Police for the area
- Her Majesty's Commissioners of Customs and Excise

8.2 If the application is granted, this notice –
(a) must be in the prescribed form,

(b) if the licensing authority have attached a condition to the licence under section 169(1)(a) or excluded under section 169(1)(b) a condition that would otherwise have attached by virtue of section 168, must give the authority's reasons, and

(c) if representations were made about the application under section 161, must give the authority's response to the representations.

8.3 If the application is rejected, this notice –
(a) must be in the prescribed form, and

(b) must give the authority's reasons for rejecting the application.

Where a licensing authority rejects an application for a premises licence, the applicant may appeal.

8.4 Where a licensing authority grant an application for a premises licence, either of the following may appeal –

- (a) a person who made representations in relation to the application
- (b) the applicant

8.5 Appeals must be instituted in the Magistrates Court for the area within 21 days

beginning with the day on which the appellant receives notice of the decision against which the appeal is brought.

9. FOR DECISION

9.1 The Sub-Committee must consider and determine the application.

9.2 The effect of the decision

The decision of the Sub-Committee may be subject to appeal and/or Judicial Review

9.3 Risks

An appeal against a decision of the Sub-Committee or a Judicial Review of the application process may present financial risks to the Council with regard to any award of costs against it.

10. EQUALITIES IMPACT

10.1 The arrangements for the Licensing Hearings seek to ensure that all applicants and other interested parties receive a fair hearing and that the process is accessible to all groups within the community.

11. ENVIRONMENTAL AND DESIGN IMPACT

11.1 The effective implementation of the Gambling Act 2005 will contribute to an improved environment for local residents and other stakeholders.

12 HUMAN RIGHTS IMPACT

12.1 The Human Rights 1998 (HRA) requires public bodies to ensure everything they do is compatible with Convention Rights and makes it unlawful for a public authority to act incompatibly with those Rights. **Article 6 (A6)** of the European Convention on Human Rights (ECHR) is the right to a fair trial. The key elements of this include:

- The right to a *fair* hearing;
- The right to a *public* hearing;
- The right to a hearing before an *independent and impartial tribunal*;
- The right to a hearing *within a reasonable time*.

12.2 When hearing an application, the proceedings of a non-judicial body such as the Licensing Sub Committee, as opposed to an actual Court, need not meet the full requirements of A6 where there is a right of appeal from the Licensing Sub Committee to a Court that does meet the full A6 standards and can consider all aspects of the case (even if that does not include a full re-hearing of the facts).

12.3 While it is good practice to make a hearing before the Licensing Sub Committee as A6 compliant as possible, it will not be a breach of the HRA if it is not. Further, the hearing of all applications is subject to the principles of Natural Justice and the requirement for decisions to be 'Wednesbury reasonable'.

13. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS

13.1 Protocols agreed in relation to Licensing Hearings are within the Council's Constitution and will be accessible as part of the Council's Publication Scheme maintained under the Freedom of Information Act.

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BACKGROUND DOCUMENTS:

App 1 Application Forms & risk assesment

App 2 is the Summary of Machine Provisions by premises.

App 3 is Part 9 from the Gambling Commission Guidance to Local Authorities which concerns Premises Licence conditions.

App 4 Part 21 from the Gambling Commission Guidance

App 5 Council's Statement of Gambling Policy & Local risk assessment

App 6 Relevant representations

App 6A Responsible Authority representations