

LEICESTER CITY COUNCIL

LICENSING SUB-COMMITTEE

7TH DECEMBER 2022

APPLICATION FOR BINGO PREMISES LICENCE

6 HAYMARKET, LEICESTER LE1 3GD

SKELETON ARGUMENT ON BEHALF OF APPLICANT

INTRODUCTION

1. This is an application by Merkur Slots UK Limited (“the applicant”) for a new bingo premises licence.
2. The purpose of this skeleton argument is to help the Sub-Committee navigate the material by setting out some of the background to the application, explaining the legal context under the Gambling Act 2005, and making brief submissions dealing with the representations.
3. In considering the application, the Committee may be particularly assisted by looking at the following documents:
 - Witness statements:
 - Amanda Kiernan, Head of Compliance (pages 1 to 8)
 - Steve Ambrose, Operations Director (pages 9 to 11)
 - Nigel Davis, Head of Gaming Machines (pages 12 to 13)
 - Wanda Kidd, Area Manager (page 14)

- Stuart Jenkins, Licensing Consultant, Observation Report re Haymarket (pages 15 to 25 and Appendix pages 26 to 63)
- Observation reports re Merkur Premises by Stuart Jenkins and Nicholas Mason (pages 64 to 373)
- Legal obligations to promote licensing objectives:
 - Gambling Commission's Licence Conditions and Codes of Practice applicable to non-remote bingo licences (pages 506 to 561)
 - Mandatory and default conditions attaching to bingo premises licences (pages 574 to 575)
 - The individual conditions offered by the applicant (page XVI)
- Operational management plan and security measures (pages 392 to 393)
- Planning permission for 6 Haymarket, including condition requiring compliance with operational management and security measures (pages 394 to 396)

SUMMARY

4. The applicant is a national provider of bingo and adult gaming centres which operates to the highest standards of social responsibility and compliance.
5. It has over 220 premises. It has been granted licences at every site at which it has applied and has never suffered a regulatory intervention or review. Its sites are across a range of areas, geographically and socially.
6. The applicant has two existing sites in Leicester, at 92 Granby Street and also at 148 Melton Road.
7. The applicant has prepared a detailed local area risk assessment in accordance with the Gambling Commission's Licence Conditions and Codes of Practice.

8. The Police were consulted both before the submission of this application and again in the normal way following the application, and have made no representation. As the Sub-Committee will be aware, the Police are its main sources of advice on crime and disorder and community protection locally, including harm from low level street disorder, and have particular knowledge in this case because they are familiar with the applicant's existing premises in Leicester. The Police view is consistent with the applicant's widespread experience, independently confirmed by Mr. Jenkins and Mr. Mason, who have covertly observed many Merkur premises.
9. There is no representation from the child protection authority or the environmental health authority or indeed the licensing authority itself, or any third sector agency or organisation concerned with the protection of vulnerable people.
10. All authorities and agencies have a clear understanding of the impact of these types of premises, since there are three Shipleys premises nearby, two of which trade 24 hours per day. The absence of objection, therefore, should be read in that context.

BACKGROUND

11. The applicant is part of the Gauselmann group, which is one of the most experienced providers of gaming premises on the high street across the UK, including adult gaming centres and bingo premises. Players in high street bingo premises access bingo games through the use of tablets, which are increasingly replacing paper bingo cards as provided in large, flat-floor bingo halls. It is because the applicant wishes to offer bingo in its premises that it is required to apply for a bingo premises licence.
12. As one would expect, the applicant and its sister companies have detailed systems for compliance with the law and promotion of the licensing objectives, which they implement through staff training and management programmes and supervise through area and national management oversight and independent audit.
13. Bingo premises are subject to a high degree of regulation in order to support the licensing objectives, including the following:

- Premises and their management and operation are subject to the Gambling Commission's extensive Licence Conditions and Codes of Practice applicable to non-remote bingo operating licences.
- Premises licences are subject to mandatory and default conditions set by the Secretary of State with the approval of Parliament.
- The number of machines, the way they operate and their stake and prize limits, are strictly regulated through the Gambling Act 2005 (by Parliament), regulations (by the Secretary of State) and technical standards (by the Gambling Commission). For example, at least 80% of the machines in bingo premises have the same stake and prize limits as pub fruit machines, with 20% governed by the same limits as other high street gambling establishment (AGCs and betting offices).
- In this case, the applicant has offered further conditions as part of the application (page XVI).

The nature of high street bingo premises

14. Gambling on the high street in Great Britain is dominated by betting offices, both numerically and in terms of environmental impact. As to numbers, betting offices outnumber bingo premises 12:1 (7,683 v 648¹). As to impact, betting offices can bring with them social issues. Hence, when an application is made for a bingo premises licence, it is sometimes thought that it will bring with it the same kind of issues as arise at high street betting offices.
15. In fact, high street bingo premises in general and the applicant's in particular are completely different from betting offices in terms of local impact.
16. It is therefore important to try to convey why the applicant's premises trade without regulatory concern.

¹ Gambling Commission industry statistics.

17. *On arrival.* It is noticeable that groups do not loiter or gather outside high street bingo premises smoking, drinking, littering and importuning passers-by. The absence of such activity is not only observable but is explained by several facts:

- The customer demographic is different from betting offices. It is older and up to 50% female with customers coming in alone or with partners rather than in groups.
- There are no “events” in bingo premises such as football matches or horse races and therefore no reason to hang around, and nowhere to cluster or socialise.
- There are no general seating areas for people to gather inside. The premises are not fitted out for groups.
- Alcohol is not only not sold but strictly prohibited.
- Those under the influence of drugs or alcohol are not admitted.
- Unlike in betting offices, staff are not behind the counter taking or paying out bets. They are on the shop floor, greeting customers as they enter, which also means controlling who is permitted to enter and effectively supervising the premises.
- Good quality CCTV systems are fitted to the exterior of the premises and are monitored. Those outside know they are under surveillance. If loitering occurs, it is dealt with.

18. The effect on the streetscape is important. Those passing high street bingo premises do not have to walk past groups of people standing or misbehaving in the street, whether during the school run, the evening or otherwise. Consistent and authoritative evidence on this topic is given by company witnesses and also by Mr Jenkins and Mr Mason.

19. *Exterior appearance.* The facades of high street bingo premises are smart, well-maintained and spotlessly clean. It is not possible to see gambling taking place inside, unlike (for example) betting offices, or pubs which admit children. There is no advertising on the exterior which might be attractive to children: this is strictly controlled by the Advertising Standard Authority’s Codes of Practice which are translated into legally enforceable regulation by the Gambling Commission’s Licence Conditions and Codes of Practice. The exterior contains signage explaining that Think 25 is operated, that alcohol is not permitted and that CCTV is in operation, alongside responsible gambling messaging.

20. *Upon entry.* Those entering will be greeted face to face by a uniformed member of staff. This is an opportunity to observe whether the customer appears to be under 25 (in which case Think 25 is operated), or whether there may be any other issue such as inebriation, in which case the customer will politely be asked to leave. The staff member will check whether the customer needs any other form of assistance. This interaction means that staff are aware of who is using their premises. Again, this is unlike betting offices where staff are behind a counter taking and paying out bets.
21. *Appearance.* The interiors are clean, well-lit, comfortable and carpeted. Toilet facilities are provided. Responsible gambling messaging is prominently displayed throughout the premises and on the machines. Customer information leaflets are also prominently displayed, explaining where and how to obtain help with problem gambling.
22. *Participation.* Customers have an opportunity to play bingo on tablets, which includes being linked to a national game, and to play machines, the limits for which are set by law. During their stay they will be offered tea/coffee and snacks, and will often chat with the friendly staff. When they are finished playing they wander off with zero impact on the locality.
23. *Protection of vulnerable people from being harmed or exploited by gambling.* So far as vulnerable persons are concerned:
- Alcohol is not permitted in the applicant's bingo premises.
 - Those who are intoxicated through alcohol or drugs are not permitted on the premises.
 - As required by the Gambling Commission's Licence Conditions and Codes of Practice, the applicant's systems include processes for customer interaction and self-exclusion, operated by trained staff. Interventions are recorded electronically so that they can be overseen by independent compliance auditors.
 - Customers may set limits on gaming machines (duration of play and deposit) to assist them with managing their gambling behavior. Default limits are automatically applied.

- “Stay in Control” posters and leaflets with the GamCare helpline number are located prominently in the premises, including the WC.
- All machines display responsible gambling messages with helpline contact details.

24. *Protection of children from being harmed or exploited by gambling.* As regards this objective:

- Although children are entitled to enter bingo premises as a matter of law, children are not allowed in the applicant’s premises.
- The exterior contains no advertising or marketing which might be attractive to children.
- Gambling cannot be seen from the outside unlike, say, in betting offices and sometimes pubs.
- The exterior (and the interior) contains prominent messaging stating that Think 25 is applied.
- Those entering are greeted by staff members, so that their appearance is checked immediately.
- Staff are required to log all Think 25 events electronically, with premises data checked by the applicant’s audit department to ensure that the system is being properly operated.
- Third party age verification testing is conducted.
- It is fair to report that the outward appearance, interior ambience, supervision, layout and product in bingo premises are not attractive to children, and the applicant’s systems have proved more than effective to ensure that underage gambling is not an issue in its premises. It is also right to mention that, trading on busy high streets nationally, premises are almost always in close proximity to fast food outlets attractive to children, but this has not proved problematic.

25. *Security.* As stated above, the applicant does not suffer significant issues with crime and disorder. This is a function of the customer demographic, the ban on alcohol and the nature of the product, but is also because of the measures taken by the applicant to prevent it:

- Staffing levels are set following a security risk assessment.
- Customer numbers are low, with usually only a handful of customers in the premises. Double digit numbers occur very rarely. This means that miscreant behaviour is immediately identified, recorded and dealt with.
- The layout of the premises facilitates effective supervision. There is no space for groups to gather.
- Staff members are on the trading floor, not behind a counter.
- Good quality CCTV is used throughout (inside and out) and customers are aware they are monitored.
- The use of Staff Guard which enables staff to use a portable alarm to liaise with a central security hub and SIA-licensed staff with audio and visual feeds, and for hub staff to speak directly with customers who therefore know they are being overseen. Staff Guard personnel can liaise directly with local Police if necessary.
- Staff members do not carry floats.
- Safes are time-delayed.
- Anti-money laundering systems are used on the machines.
- The locational and social context is part of induction training for all staff.
- Staff are also trained in how to deal with difficult customers (there is a 6 week training course at the outset followed by regular refresher training).
- Any incidents are logged electronically and reviewed at national level.

- Premises are fitted with maglocks, enabling entry to be controlled when necessary.
- The applicant maintains good liaison with local Police.
- It will also join any available Betwatch scheme.

THE REGULATORY RECORD OF THE APPLICANT

26. In the previous section, we have briefly described the standard controls used by the applicant to provide a safe, welcoming and pleasant environment for customers while also promoting the licensing objectives.

27. **That it does all of this to a standard of excellence is demonstrable:**

- **It has over 220 licences. It has been granted licences in every premises it has applied for.²**
- **None of its trading licence has ever been reviewed.³**

28. This is despite the range of areas in which the applicant operates, including those with high social deprivation and other social issues. Its systems, staff training, compliance monitoring and audit have proved sufficient to ensure that the licensing objectives are promoted.

29. It is a record of which the applicant is proud and guards with care. In the very rare event of any kind of issue, it will always liaise with relevant authorities to ensure that it is resolved promptly and effectively.

THE LAW

² For completeness, there was one refusal in Blackpool but this was granted on re-application three months later following submission of further information.

³ In 2021, reviews were commenced in Enfield but were rejected without a hearing by the licensing authority under section 198 Gambling Act 2005 since they were in substance objections to gambling in general rather than to the operator or the premises.

30. As the Committee will be aware, each piece of licensing legislation sets out a different approach to the question of grant. The approach relevant to gambling is in section 153 of the Gambling Act 2005:

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 thinks it:

(a) in accordance with any relevant code of practice [issued by the Gambling Commission]

(b) in accordance with any relevant guidance issued by the Commission

(c) reasonably consistent with the licensing objectives (subject to (a) and (b))

(d) in accordance with the [authority's statement of licensing policy] (subject to (a) to (c)).

31. The gambling licensing objectives are:

(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,

(b) ensuring that gambling is conducted in a fair and open way, and

(c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

32. The effect of the aim to permit in section 153 makes the Gambling Act 2005 different from the Licensing Act 2003. This is explained by the Gambling Commission in its Guidance to licensing authorities as follows:

1.20 The Act places a legal duty on both the Commission and licensing authorities to aim to permit gambling, in so far as it is considered to be reasonably consistent with the pursuit of the licensing objectives. The effect of this duty is that both the Commission and licensing authorities must approach their functions in a way that seeks to regulate gambling by using their powers, for example, powers to attach conditions to licences, to moderate its impact on the licensing objectives rather than by starting out to prevent it altogether.

33. It is not open to an authority to refuse a licence on the basis that it is inappropriate to licence an operation or a further operation, in an area. As the Guidance says:

5.34 Licensing authorities should be aware that other considerations such as moral or ethical objections to gambling are not a valid reason to reject applications for premises licences. In deciding to reject an application, a licensing authority should rely on reasons that demonstrate that the licensing objectives are not being, or are unlikely to be, met, and such objections do not relate to the licensing objectives. An authority's decision cannot be based on dislike of gambling, or a general notion that it is undesirable to allow gambling premises in an area (with the exception of the casino resolution powers).

34. Rather, as the paragraph makes clear, there would need to be reasons which demonstrate that the licensing objectives would not be met. That means demonstrate by evidence.

35. The following points should be noted:

- a. The section 153 test is mandatory: “*a licensing authority shall*”
- b. The obligation to “*aim to permit*” where (a) – (d) are satisfied is described by the Gambling Commission in its Guidance as “*the licensing authority's primary obligation.*”
- c. The “*aim to permit*” is explained in the leading textbook Patersons:

“... it creates a presumption in favour of granting the premises licence since it is only if the licence is granted that the premises may lawfully be used for gambling. But the duty seems to go further than that. The verb ‘to aim’ is defined by the OED as meaning ‘To calculate one’s course with a view to arrive (at a point); to direct one’s course, to make it one’s object to attain. Hence to have it as an object, to endeavour earnestly....’ A person who ‘aims’ to achieve a result will usually take active steps to bring it about. The provision appears to place a duty upon the licensing authority to exercise their powers so far as is lawfully possible to achieve a position in which they can grant the premises licence and thus permit the premises to be used for gambling.”

As the Gambling Commission Guidance says:

“Licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through use of conditions”

- d. In the hierarchy of considerations in section 153, the licensing objectives come third and the policy comes fourth, expressly subject to the considerations in (a), (b) and (c). As the Guidance states (para 5.21): *“In the unlikely event that a licensing authority perceives a conflict between a provision of a Commission code of practice or this guidance, and its own policy statement or view as to the application of the licensing objectives, the structure of s.153 makes it clear that the Commission’s codes and this guidance take precedence.”*
 - e. Conditions should only be added where it is necessary to do so, and even then such conditions need to be proportionate to the circumstances requiring a response, relevant, directly related, fair and reasonable.
 - f. The following considerations are legally irrelevant to the determination of an application for a premises licence:
 - i. Nuisance (see Guidance by Gambling Commission).
 - ii. A dislike of gambling.
 - iii. A general notion that it is undesirable to allow gambling premises in an area.
 - iv. Moral or ethical objections to gambling.
 - v. The demand for gambling premises (see s 153 Gambling Act 2005). As such, objections which state that there are enough gambling establishments in a locality may be relevant to planning, but they are irrelevant to licensing.
36. It is therefore necessary to consider whether there is evidence which demonstrates that the licensing objectives would not be met by granting a licence. This is not the same as demonstrating that an area does, or does not, have social or economic challenges. It is

a question of asking whether the evidence demonstrates that this operator, with the operating model and conditions proposed, would harm the licensing objectives in a way which cannot be mitigated by conditions.

37. It is necessary to bear the above in mind when considering the three representations which have been submitted.

REPRESENTATIONS

38. There are three objections from local businesses. Their essence is that there is anti-social behaviour in the vicinity, together with street drinking and drug taking, and that some of those involved are vulnerable.

39. The Sub-Committee's expert advisors are the responsible authorities. In this case, none has submitted any representation against this application.

40. The applicant is respectful of local views, but replies briefly as follows:

(1) The question is not whether there is anti-social behaviour and related issues locally but whether the applicant will add to it.

(2) The applicant operates premises in town and city centres across the UK. Its experience is that it does not add to such issues, for the reasons extensively set out in its evidence. As stated above, it has never experienced a regulatory intervention or review hearing.

(3) The applicant's premises include two in Leicester, one close by in Granby Street. It therefore has experience of operating in Leicester and the authorities are aware of any impact as a result of its operation.

(4) There are three Shipleys premises in the vicinity of the applicate site, two of which trade for 24 hours. The impact of such premises is therefore known to the authorities.

(5) The Sub-Committees expert advisers are the responsible authorities. None of them has expressed any concern regarding this application.

(6) The applicant is already subject to a legal obligation imposed by the planning authority to adhere to its operational management plan and security measures.

41. The applicant has proposed conditions following its local risk assessment. It does not consider that any further measures are needed, following consideration of the representations. However, the applicant will keep all security and other protective measures under review post-opening and will take any further measures as may be needed from time to time.

42. Finally, the representation from Mallard Jewellers makes points (numbered 1, 3 and 4), which are the province of the planning system and, with respect, are not relevant to gambling licence applications.

CONCLUSION

43. In conclusion:

- The applicant is a highly competent organisation, regulated by the Gambling Commission, and one whose corporate systems, staff training, management and audit are directed towards promotion of the licensing objectives.
- It is part of a group which operates 220 licensed gambling premises in a wide variety of locations of higher and lower crime, deprivation and population density.
- Despite that, it has never experienced a regulatory complaint, review of a trading venue or prosecution.
- There is no evidence before the Council that it has failed to promote the licensing objectives elsewhere, including in Leicester.
- The type of premises, their layout, their customer demographic, the low numbers of customers simultaneously using premises and the quality of management mean that issues of crime and disorder are rare.
- The premises, if licensed, will be subject to strict regulatory requirements, deriving from: the Licence Conditions and Codes of Practice; machine stake,

prize and numbers limits, and mandatory and default premises licence conditions and individual conditions.

- There are no representations from responsible authorities.
- The applicant has a strong track record of co-operation with local statutory bodies. In the unlikely event of an untoward consequence, it will work to resolve the issue promptly and efficiently.

44. For these reasons, it is submitted that the test in section 153 is fully met. Conversely, taking into account the competence and track record of the applicant (nationally and locally), its legal obligations under the Act, Regulations and codes, and the conditions to which it is proposing to submit, it has not been demonstrated that the licensing objectives are unlikely to be met.

45. Accordingly, the Sub-Committee is respectfully invited to grant the application as asked.

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28th November 2022

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