

BRIGHTON & HOVE CITY COUNCIL

LICENSING SUB-COMMITTEE

APPLICATION FOR VARIATION OF BINGO PREMISES LICENCE

9-10 ST JAMES' STREET, BRIGHTON BN2 1RE

SKELETON ARGUMENT ON BEHALF OF APPLICANT

INTRODUCTION

1. Merkur Slots UK Limited (“the applicant”) has traded at 9-10 St James’s Street until midnight since February 2022. It now applies for a variation of its licence to enable it to trade for 24 hours.
2. Notably, these hours are already traded by Admiral at 126-127 St James's St. nearby.
3. There is no suggestion that Admiral’s trade for 24 hours per day has produced significant concern, and no reason is given why the applicant would be any different.
4. There is no local objection from any local resident, association or councillor.
5. There is no representation from the child protection authority or the environmental health authority, or any third sector agency or organisation concerned with the protection of vulnerable people.
6. The only objection is from the Police.
7. 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 representation.

8. In considering the application, the Committee may be particularly assisted by looking at the following documents:
- Witness statements:
 - Amanda Kiernan, Head of Compliance (pages 5- 13)
 - Steve Ambrose, Operations Director (page 14)
 - Andy Tipple, Head of Product (page 17)
 - Joe Seaden, Area Manager (page 18)
 - Observation report re Brighton by Nick Mason (pages 20-28)
 - Legal obligations to promote licensing objectives:
 - Conditions on licence and new conditions offered (page 3)
 - Mandatory conditions (page 549)
 - Gambling Commission’s Licence Conditions and Codes of Practice applicable to non-remote bingo licences (page 481)
 - Operational standards (page 383)
 - Local area risk assessment (page 366)

SUMMARY

9. The applicant is a national provider of gaming facilities. It operates to the highest standards of social responsibility and compliance.
10. It has over 220 premises. It has been granted licences at every site at which it has applied and has never suffered a review or other regulatory intervention. Its sites are across a range of areas, geographically and socially.
11. It operates a large number of 24 hour premises. Again, none of these has ever been the subject of a review or regulatory intervention.

12. Its premises in Brighton opened in February 2022. In the 16 months since, there have been two police call-outs, neither late-night.
13. For this application, the applicant has prepared a detailed local area risk assessment in accordance with the Gambling Commission's Licence Conditions and Codes of Practice, and has offered further conditions (page 3) to provide assurance to the Sub-Committee.
14. The Police's main concern appears to be that there is crime in the locality. However, there is crime in every locality where the applicant operates: all of its sites are in town centres. The question is whether the applicant will add to it if permitted to trade beyond midnight. Its experience is that it does not.
15. There are many reasons for this:
 - (1) The applicant has 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.
 - (2) Customer numbers are low, usually no more than a handful at one time.
 - (3) The customer demographic is adult and up to 50% female with customers coming in alone or with partners rather than in groups.
 - (4) 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.
 - (5) There are no general seating areas for people to gather inside. The premises are not fitted out for groups.
 - (6) Alcohol is not only not sold but strictly prohibited.
 - (7) Those under the influence of drugs or alcohol are not admitted.
 - (8) Children are not admitted.

- (9) 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.
- (10) Good quality CCTV systems are fitted inside and out so that customers know they are under surveillance.
- (11) Exterior loitering does not occur.
- (12) 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.
- (13) The interiors are clean, well-lit, comfortable and carpeted. Toilet facilities are provided.
- (14) Customers 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.
- (15) Staffing levels are set following a security risk assessment. There is no pre-planned single staffing after 8 p.m.
- (16) Because customer numbers are low, any miscreant behaviour is immediately identified, recorded and dealt with.
- (17) The layout of the premises facilitates effective supervision. There is no space for groups to gather.
- (18) Staff Guard is deployed, 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.
- (19) Staff members do not carry floats.

- (20) Safes are time-delayed.
- (21) Anti-money laundering systems are used on the machines.
- (22) The locational and social context is part of induction training for all staff.
- (23) 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).
- (24) Any incidents are logged electronically and reviewed at national level.
- (25) Premises are fitted with maglocks, enabling entry to be controlled when necessary.
- (26) Panic alarms are installed giving direct contact with the Police.
- (27) Venues are subject to security risk assessments, so that any further measures needed are periodically assessed and undertaken.
- (28) The applicant maintains good liaison with local Police.

16. All in all, it the applicant sets out to provide a safe, welcoming and pleasant environment for customers while also promoting the licensing objectives.

17. 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.¹**
- **None of its trading licence has ever been reviewed.²**

18. This is despite the range of areas in which the applicant operates, including those with high social deprivation and other social issues, including 24 hour premises. Its systems, staff training, compliance monitoring and audit have proved sufficient to ensure that the licensing objectives are promoted.

¹ For completeness, there was one refusal in Blackpool but this was granted on re-application three months later following submission of further information.

² 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.

19. 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.
20. The applicant has wanted to produce independent evidence that its late night premises do not cause crime and disorder issues. It therefore commissioned Leveche Associates to conduct covert overnight inspections at a large number of the applicant's premises. 12 different locations were inspected, all with the same result (pages 59-365). Leveche Associates (Nick Mason) also conducted an observation report at the applicant's Brighton premises and at Admiral, which trades for 24 hours in the same street (pages 20-58). His conclusions from this work are that the extension applied for will not produce a deleterious impact.

THE LAW

21. 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)).

22. The gambling licensing objectives (section 1) 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.

23. 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 (page 542):

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).

24. 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.

25. 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’s Guidance says:

“5.31 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 (para 9.28).
- f. Even then such conditions need to be proportionate to the circumstances requiring a response, relevant, directly related, fair and reasonable (para 9.31).
- g. The following considerations are legally irrelevant to the determination of an application for a premises licence:
 - i. Nuisance (see Guidance para 5.5).
 - ii. A dislike of gambling (para 5.34).
 - iii. A general notion that it is undesirable to allow gambling premises in an area (para 5.34).
 - iv. Moral or ethical objections to gambling (para 5.34).
 - 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.

vi. Planning matters.

26. It is therefore necessary to consider:

- whether there is evidence which demonstrates that the licensing objectives would not be met by granting the variation;
- bearing in mind the controls on the applicant, including the further conditions offered, is it necessary to refuse or only partially grant the application?
- whether any further conditions might be necessary in order to be able to grant the application, consistent with the aim to permit.

REPRESENTATION

27. The applicant works with and respects the Police. It replies briefly to the representation as follows.

28. The Police state that there is crime locally. As stated above, this is not a reason to refuse a variation. The question is whether the Police have demonstrated by evidence that the variation will increase crime in a way which cannot be mitigated by licence conditions. No such evidence has been given.

29. The Police have raised issues regarding the safety of staff and customers. The applicant is highly experienced at protecting both in its 220 premises across the UK. It has never suffered a review or any other regulatory process. It has provided extensive evidence of its systems. It has provided its risk assessment, has offered conditions and will continue to monitor and risk assess the premises before and after opening. The Police provide no evidence that its systems, processes or measures are ineffective.

30. The Police raise concerns regarding alcohol and drugs. Neither is permitted in the applicant's premises.

31. There is also a concern raised regarding lone staffing. In fact, the premises will be double-staffed at all times from 10 p.m. save in a highly unusual case where, for example, the second staff member becomes unwell. But in that situation the maglock will be operated. The condition offered (condition 13) is in a standard form.

32. The Police also state that there could be noise. Leaving aside the fact that customers leaving an adult gaming centre are different from customers leaving pubs or clubs and do not cause nuisance, noise is not a gambling matter.
33. The Police state that the local area risk assessment shows 17 incidents. The applicant records everything, and so very low level incidents are picked up. Only two police call-outs have occurred, neither at night.
34. The Police mention that there is a 24 hour gambling venue nearby, but do not consider that this is a reason to grant a second one. The question is whether there is a properly evidenced reason not to grant a second one. None is given.
35. The applicant notes the Police view that there are challenges within the location, and that this application should be fully scrutinised and, if granted, robust conditions applied to protect employees and customers. The applicant is pleased to subject itself to scrutiny, and to discuss conditions with the Sub-Committee.

PHILIP KOLVIN KC
11 KBW
Temple EC4
20th June 2023