

# Licensing Panel (Gambling Act 2005 Functions)

## Agenda Item 12

Brighton & Hove City Council

<b>Subject:</b>	Application for Review of Premises Licence under the Gambling Act 2005		
<b>Premises:</b>	Units 1-4 Regency Arcade, 63-64 West Street, Brighton, BN1 2RA		
<b>Applicant:</b>	Mark Savage-Brookes, Licensing Officer, Environmental Health & Licensing, Regulatory Services, Public Health, Brighton & Hove City Council		
<b>Date of Meeting:</b>	19 <sup>th</sup> December 2014		
<b>Report of:</b>	Head of Regulatory Services		
<b>Contact Officer:</b>	Name: Sarah Cornell	Tel: (01273) 295801	
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<b>Wards Affected:</b>	Regency		

### FOR GENERAL RELEASE

#### 1. PURPOSE OF REPORT AND POLICY CONTEXT:

1.1 To determine four applications for **Review** of Gambling Premises Licences (Adult Gaming Centres) under the Gambling Act 2005 for Units 1-4 Regency Arcade.

#### 2. RECOMMENDATIONS:

2.1 That the Panel determine the reviews of the premises licences for premises known as Unit 1, Unit 2, Unit 3 & Unit 4 Regency Arcade.

#### 3. CONTEXT/ BACKGROUND INFORMATION & CONSULTATION

3.1 Applications were received from Mark Savage-Brookes, Licensing Officer, to review the four licences granted to Regency Arcade, 63-64 West Street, Brighton, BN1 2RA:-

##### **Appendix A – Units 1, 2 3 & 4**

3.2 Existing licences attached at **Appendix B**.

3.3 The grounds for the reviews relate to the following Licensing objective:

- Protecting children and other vulnerable persons from being harmed or exploited by gambling (it should be noted that the requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling).

3.4 In exercising its function under the Gambling Act 2005 the Licensing Authority must aim to permit the use of premises for gambling in so far as the Authority think 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 Gambling Commission,
- c) Reasonably consistent with the licensing objectives, and
- d) In accordance with the Authority's Licensing Policy.

3.5 At this hearing the licensing authority must:

- Consider the applications made in accordance with Section 200
- Consider any relevant representations
- As a result of a review of a premises licence under section 201 a licensing authority may—
  - (a) revoke the licence;
  - (b) suspend the licence for a specified period not exceeding three months;
  - (c) exclude a condition attached to the licence under section 168 or remove or amend an exclusion;
  - (d) add, remove or amend a condition under section 169.

### **Representations received**

3.6 Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma.

3.7 One representation was received. It was received from the Gambling Commission (**Appendix C**).

3.8 Representation received had concerns relating to:

- Protecting children and other vulnerable persons from being harmed or exploited by gambling (it should be noted that the requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling).

## **4. CONSULTATION**

Commentary on gambling policy

4.1 The following extracts from Brighton & Hove City Council Statement of Gambling Policy are considered relevant to this application and numbered as they appear in the policy:

## **1. Introduction**

1.2 The gambling objectives are:-

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

1.5 This policy will come into force on 1 January 2013 by resolution of Full Council in December 2012 and will be reviewed and published at least every three years.

The review process will be undertaken using the same principles as the initial consultation process. The policy will also be under review in the interim periods; any revisions required by either process will also be the subject of consultation. It is also subject to guidance issued by the Government including any issued after the date of publication of this Statement.

### **1.13 Human Rights**

In considering applications, and taking enforcement action, licensing authorities are subject to The Human Rights Act and in particular the following relevant provisions of the European Convention on Human Rights:-

- Article 1, Protocol 1 - peaceful enjoyment of possessions. A licence is considered a possession in law and people should not be deprived of their possessions except in the public interest.
- Article 6 - right to a fair hearing.
- Article 8 - respect for private and family life. In particular, removal or restriction of a licence may affect a person's private life; and
- Article 10 – right to freedom of expression.

Licensing Authorities should be aware that moral objections to gambling are not a valid reason to reject applications for premises licences. This is because 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). In deciding to reject an application, a licensing authority should rely on reasons that demonstrate that the licensing objectives are not being met.

## **2 Fundamental Principles**

**2.1 Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime**

2.2 Applicants for premises licences will have to hold an operating licence from the Gambling Commission before the premises licence can be issued. The licensing authority will not need to investigate the suitability of an applicant since the Commission will have already done so for both operating and personal licences.

## **2.7 Ensuring that gambling is conducted in a fair and open way**

Generally the Commission would not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be a matter dealt with under the operating licence or personal licence.

## **2.10 Protecting children and other vulnerable persons from being harmed or exploited by gambling**

With limited exceptions, the intention of the Gambling Act is that children and young persons should not be permitted to gamble and should be prevented from entering those gambling premises that are adult-only environments. Children must be protected from being “harmed or exploited by gambling” which in practice means preventing them from taking part in or being in close proximity to gambling and for there to be restrictions on advertising so that gambling products are not aimed at children or advertised in such a way that makes them particularly attractive to children.

2.11 Specific measures to prevent this may include:-

- a) Supervision of entrances
- b) Segregation of gambling from areas frequented by children
- c) Supervision of gaming machines in non-adult gambling specific premises
- d) Gaming machines in betting shops should not be visible from outside the premises
- e) Enhanced CRB checks may be required for all applicants in relation to Family Entertainment Centres and declaration from an applicant that he or she has not been convicted of a relevant offence

These considerations will be particularly relevant on tracks (where children will be permitted in the betting areas on race-days)

2.12 The Act does not seek to prohibit particular groups of adults from gambling in the same way that it prohibits children. “Vulnerable persons” will not be defined but for the purposes of this policy the assumption is that this group includes people who from a common sense perspective, a provider of gambling services would be expected to assess as unlikely to be able to make informed or balanced decisions about gambling, due to a learning disability, mental health problem, a known compulsion to gamble or the effects of alcohol or drugs.

Operators should make information publicly available via leaflets etc about organisations that can provide advice and support, both in relation to gambling itself and to debt e.g. GamCare, Gamblers Anonymous, Gordon House Association, National Debtline, local Citizens Advice Bureaux and independent advice agencies.

2.13 Consideration must be given, in relation to particular premises, whether any special considerations apply in relation to the protection of vulnerable persons. Any such considerations will need to be balanced against the authority's objective to aim to permit the use of premises for gambling.

2.16 Consideration may be given to imposing conditions concerning

- Installation of cash dispensers (ATMs) on premises (e.g. location)
- As set by regulation.

2.17 Bookmakers shops: While the authority has discretion as to the number, nature and circumstances of use of betting machines, there is no evidence that such machines give rise to regulatory concerns. This authority will consider limiting the number of machines only where there is clear evidence that such machines have been or are likely to be used in breach of the licensing objectives. Where there is such evidence, this authority may consider, when reviewing the licence, the ability of staff to monitor the use of such machines from the counter.

## **6 Principle to be applied in exercising functions under Part 15 of the Act with respect to inspection of premises and the power under Section 346 of the Act to institute criminal proceedings**

6.1 The Enforcement Concordat (now called the Regulatory Compliance Code) will be accepted as best practice. The Better Regulation Executive and Hampton review of regulatory inspections and enforcement will be used as models, as follows:

- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects.

## **9. Standard Conditions**

Appendix 2 (Section 169 of the Act) contains a pool of model conditions that may be imposed or excluded by the licensing authority. The Act provides that conditions may be attached to premises licences. Conditions may be attached in a number of ways:

- They may be attached automatically, having been set out on the face of the Act including mandatory and default conditions from the Secretary of State, or
- They may be attached to premises licences by licensing authorities The

authority should take decisions on individual conditions on a case-by-case basis and choose suitable and appropriate conditions to suit the specific needs of an individual premises' operation.

## **10. Enforcement**

10.1 The enforcement of gambling law and the inspection of licensed premises will be detailed in the Protocol between the Gambling Commission, Brighton & Hove City Council and Sussex Police. This protocol will monitor compliance with the provisions of the Act and with licence conditions, and the investigation of suspected offences.

10.2 In general, the approach of the Commission will be that the authority which issues a licence or permit should take the lead in ensuring compliance with the licence and any conditions attached to it, including compliance with relevant codes of practice.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### **5.1 Financial Implications:**

The Gambling Act 2005 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

### **5.2 Legal Implications:**

5.2.1 Section 153 of the Gambling Act provides that in exercising its functions under Part 8 of the Act (premises licensing and provisional statements), a licensing authority shall aim to permit the use of premises for gambling in so far as it thinks it is:

- (a) in accordance with any relevant code of practice under section 24 (i.e. such as that found within the Commission's Licence Conditions and Codes of Practice (LCCP))
- (b) in accordance with any relevant guidance issued by the Commission under section 25
- (c) reasonably consistent with the licensing objectives (subject to (a) and (b) above), and
- (d) in accordance with the Licensing Authority Statement of Policy (subject to (a) and (c) above).

5.2.2 The power to review a premises licence is designed to provide the Licensing Authority with a suitable mechanism to tackle problems that may subsequently arise once a premises is licensed.

5.2.3 The Sub-Committee must consider the premises licence review and take such of the steps mentioned below (if any), as it considers necessary. The steps are:

- To add, remove or amend the conditions attached to the premises licence
- To suspend the licence for a specified period not exceeding three months
- To revoke the licence

If the Sub-Committee decides to take action of a kind specified above they must specify the time at which the action shall take place.

The Sub-Committee may also consider issuing a warning to the licence holder and/or to recommend improvement within a particular period of time.

If none of the above steps is considered necessary the licence should remain in the form it was granted.

Lawyer Consulted: Rebecca Sidell

Date: 02.12.2014

### 5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity.

### 5.4 Crime & Disorder Implications:

Gambling policy aims to prevent crime and disorder and protect public safety.

### 5.5 Risk and Opportunity Management Implications:

Gambling is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

### 5.6 Corporate / Citywide Implications:

The success of the city's tourism strategy requires a safe, attractive city centre to improve competitiveness. The Act may significantly change night time economy.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Appendix A – The Applications for Units 1, 2, 3 & 4
2. Appendix B – Existing licences
3. Appendix C – Representation
4. Appendix D – Map of area

### **Documents in Members' Rooms**

1. Brighton & Hove City Council, Gambling Act 2005: Statement of Gambling Policy 2013.

**Background Documents**

1. Brighton & Hove City Council, Gambling Act 2005: Statement of Gambling Policy 2013.