

TO CONSIDER WHETHER A REPRESENTATION MADE IN RESPECT OF AN APPLICATION FOR A NEW PREMISES LICENCE IS A RELEVANT REPRESENTATION UNDER THE 'GAMBLING ACT 2005'**Report By: Head Of Environmental Health And Trading Standards****Wards Affected:**

Hereford City

1. Purpose

To consider whether a representation made in respect of an application for a premise licence is a relevant representation under the 'Gambling Act 2005'.

2. Background Information

On 5th October, 2007 an application was made by StanJames (Abingdon) Limited for a premise licence under the Gambling Act 2005 in respect of 23/24 Commercial Road, Hereford for a Betting Shop.

On 31st October a representation was received from 'William Hill' in respect of the application (copy shown within the background papers).

On 1st November following that representation the Licensing Authority checked the premise to ensure that the notice of the application was displayed on the premise. It was found that no notice was displayed.

Accordingly the applicant's solicitor was notified that the requirements of the act had not been met.

The applicant then requested that the 28 day period be re-started as off the 20th November.

Accordingly the 28 period concluded on 17th December.

Due to the Christmas period and to ensure that the Hearing Regulations were complied with the matter has been listed for hearing today.

3. Legislation

The following sections of the Gambling Act 2005 are relevant: -

Section 162(3) Requirements for a Hearing

A licensing authority may also determine an application for a premises licence without a hearing despite subsection (1)(a) if the authority think that the representations made under section 161—

- (a) are vexatious,
- (b) are frivolous, or
- (c) will certainly not influence the authority's determination of the application.

Section 158 Interested party

For the purposes of this Part a person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person—

- (a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- (b) has business interests that might be affected by the authorised activities, or
- (c) represents persons who satisfy paragraph (a) or (b).

These should be read in conjunction with 'The Gambling Commission Guidance to Licensing Authorities'. The following sections are relevant: -

Persons with business interests that could be affected

8.15 It could be argued that any gambling business could be affected by another gambling business expanding into any part of Great Britain. But that is unlikely to be enough to satisfy the test of being 'a person with business interests that might be affected by the premises' under consideration. For example, an operator in a particular sector (be it casino, bingo, betting etc) should not be able to lodge representations on every application put in by a rival operator anywhere in the country, simply because they are in competition within the same gambling sector. The licensing authority should be satisfied that the relevant business is likely to be affected. In this respect, licensing authorities should bear in mind that the 'demand test' in the 1963 and 1968 Acts has not been preserved in the 2005 Act. Factors that are likely to be relevant include:

- the size of the premises;
- the 'catchment' area of the premises (ie how far people travel to visit); and
- whether the person making the representation has business interests in that catchment area that might be affected.

8.16 Licensing authorities should take care to distinguish between deciding whether a person is an interested party (ie whether their representations are admissible) and forming a view on the substance of their representations (ie whether their representations are relevant). **Representations made would not be relevant if they did not relate to the licensing objectives, but instead related to demand and competition.** But the licensing authority would need to accept the representations as admissible (if the grounds were made out) and then consider their relevance to the licensing objectives.

7.49 the following examples of possible representations would not be likely to be relevant:

- that there are already too many gambling premises in the locality (although it may be relevant if it points, as a result, to rising problems in crime, disorder, underage gambling or problem gambling);

4. Options: -

There are three options available to the Committee: -

- To decide that the representation made is not a relevant representation thereby dismissing it
- To decide that the representation is relevant but that it will certainly not influence the authorities determination of the application

- To decide that the representation is relevant and would influence the authorities determination of the application and to go ahead and hear the full application application.

5. Background Papers

- Representation from William Hill

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.