

APPLICATION FOR NEW PREMISES LICENCE '23/24 COMMERCIAL STREET, HEREFORD.' – GAMBLING ACT 2005

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Hereford City

1. Purpose

To consider an application for a new premises licence in respect of 23/24 Commercial Street, Hereford.

2. Background Information

Applicant	StanJames (Abingdon) Limited	
Solicitor	Horsey Lightly Fynn	
Type of application: New	Date received: 05/10/07	28 Days consultation 17/12/07

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

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

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.

3. New Licence Application

The application for a new licence has received representations from an interested party. It is therefore now brought before committee to determine the application.

4. Summary of Application

The application is for a premise licence for Betting (Other). This would permit the premises to be used as a Licensed Betting Shop.

5. Summary of Representation

Copies of the representation can be found within the background papers.

Responsible Authorities

All have no representation to make in relation to the application.

Interested Parties.

The Local Authority has received one (1) letter of representation in respect of the application, from a local business, William Hill.

6. Issues for Clarification

This Authority has requested clarification from the **applicant** as follows: -

Whether the application they are making before the Committee is an application for a Premise Licence or a Provisional Statement.

The Authority has requested the following clarification from the **representee** – Mike Johnson (William Hill): -

Full details of the evidence he intends to present to the committee to support his representation.

7. Attaching of conditions to a licence

Section 183 of the Act states that no premises shall be used for Gambling on Christmas Day.

The Gambling Act under Section 167 and 168 provides Mandatory and Default conditions to be attached to different categories of premise licences.

Section 169 allows the licensing authority to impose or exclude a condition or conditions onto or from a licence. It states that: -

- (1) Where a licensing authority issue a premises licence they may—
 - (a) attach a condition to the licence;
 - (b) exclude a condition that would otherwise be attached to the licence by virtue of section 168.
- (2) A condition attached to the licence under subsection (1)(a) may, in particular, address a matter addressed by a condition excluded under subsection (1)(b).
- (3) A condition attached to the licence under subsection (1)(a) may apply in relation to the premises generally or only in relation to a specified part of the premises.
- (4) A licensing authority may not attach a condition to a premises licence which prevents compliance with a condition of the operating licence which authorises the holder to carry out the activity in respect of which the premises licence is granted.

The mandatory conditions under Section 167 and the default conditions under Section 168 have been laid down by the Secretary of State in the 'Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007'.

In respect of betting premises licences (other than track premises licences) the following mandatory conditions apply: -

1. *A notice stating that no person under the age of 18 years is permitted to enter the premises shall be displayed in a prominent place at every entrance to the premises.*
2. *(1) Access to the premises shall be from a street or from other premises with a betting premises licence.
(2) Without prejudice to sub-paragraph (1), there shall be no means of direct access between the premises and other premises used for the retail sale of merchandise or services.*
3. *Subject to anything permitted by virtue of the 2005 Act, or done in accordance with paragraphs 4, 5, 6 and 7 below, the premises shall not be used for any purpose other than for providing facilities for betting.*
4. *Any ATM made available for use on the premises shall be located in a place that requires any customer who wishes to use it to leave any gaming machine or betting machine in order to do so.*

5. *No apparatus for making information or other material available in the form of sounds or visual images may be used on the premises, except for apparatus used for the following purposes—*
 - (a) *communicating information about, or coverage of, sporting events, including—*
 - (i) *information relating to betting on such an event; and*
 - (ii) *any other matter or information, including an advertisement, which is incidental to such an event;*
 - (b) *communicating information relating to betting on any event (including the result of the event) in connection with which betting transactions may be or have been effected on the premises.*
6. *No publications, other than racing periodicals or specialist betting publications, may be sold or offered for sale on the premises.*
7. *No music, dancing or other entertainment shall be provided or permitted on the premises, save for entertainment provided in accordance with paragraph 5.*
8. (1) *No alcohol shall be permitted to be consumed on the premises at any time during which facilities for gambling are being provided on the premises.*
(2) *A notice stating the condition in sub-paragraph (1) shall be displayed in a prominent place at every entrance to the premises.*
9. *A notice setting out the terms on which customers are invited to bet on the premises shall be displayed in a prominent place on the premises to which customers have unrestricted access.*

In addition to this the following default condition will apply unless the Committee decide to exclude it under Section 169: -

No facilities for gambling shall be provided on the premises between the hours of 10pm on one day and 7am on the next day.

8. **Licensing Authorities Function**

Section 153 of the Gambling Act 2005 states: -

Principles to be applied

(1) 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 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:
 - (i) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
 - (ii) ensuring that gambling is conducted in a fair and open way, and
 - (iii) protecting children and other vulnerable persons from being harmed or exploited by gambling.

and

(d) in accordance with the Herefordshire Council - Statement of Principles – Gambling Act 2005.

(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.

9. **Options: -**

There are a number of options available to committee

- Grant the licence (mandatory conditions would apply) attaching the default condition.
- Grant the licence (mandatory conditions would apply) excluding the default condition.
- Grant the licence (mandatory conditions would apply) attaching the default condition and attach further conditions.
- Grant the licence (mandatory conditions would apply) excluding the default condition and attach further conditions.
- To reject the application.

10. **Background Papers**

- a. Representation
- b. Application Form
- c. Site Plan

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

NOTES

Relevant Extracts from the Gambling Commission – Guidance to Licensing Authorities**Mandatory conditions attached to all premises licences**

9.25 The following mandatory conditions will apply to all premises licences:

- a summary of the terms and conditions of the premises licence must be displayed in a prominent place on the premises;
- the layout of the premises must be maintained in accordance with the plan that forms part of the premises licence;
- National Lottery products may not be sold on the premises; and
- there can be no direct access between one premises licensed under the Gambling Act 2005 and another premises licensed under the Gambling Act 2005 with the following exceptions:
 - between bingo premises and alcohol-licensed premises/clubs with a club gaming or club gaming machine permit/FECs and tracks;
 - between tracks and alcohol-licensed premises/clubs with a club gaming or club gaming machine permit/FECs/betting premises and bingo premises; and
 - between FECs and alcohol-licensed premises/bingo halls/clubs with club gaming or club gaming machine permit and tracks.

Conditions that may be imposed or excluded by licensing authorities

9.26 Section 169 of the Act gives licensing authorities:

- the ability to exclude from premises licences any default conditions that have been imposed under section 168; and
- the power to impose conditions on the premises licences that they issue.

9.27 Licensing authorities should bear in mind their duty to act in accordance with the principles set out in section 153. Since they should aim to permit the use of premises for gambling, they should not attach conditions that limit the use of premises for gambling except where that is necessary as a result of the requirement to act:

- in accordance with this guidance, the Commission codes of practice or the licensing policy statement; or
- in a way that is reasonably consistent with the licensing objectives.

Conversely, licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through the use of conditions.

9.28 Conditions imposed by the licensing authority must be proportionate to the circumstances which they are seeking to address. In particular, licensing authorities should ensure that the premises licence conditions are:

- relevant to the need to make the proposed building suitable as a gambling facility;
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises; and
- reasonable in all other respects.

9.29 Licensing authorities should note that it is the Commission's view that the conditions necessary for the general good conduct of gambling premises will be those set as default and mandatory conditions by the Secretary of State. Therefore a pool of

additional conditions published by the Commission will not be necessary. Where there are specific risks or problems associated with a particular locality, or specific premises, or class of premises, a local authority will be able to attach individual conditions to address this. That will be a matter for them in the light of local circumstances.

- 9.30** The licensing authority should take decisions on individual conditions on a case-by-case basis, although this will be against the background of any general policy set out in this guidance or their own licensing policy statement.

Conditions that may not be attached by licensing authorities

9.31 Licensing authorities need to be aware that the Act sets out certain matters that may not be the subject of conditions. The relevant sections are:

- section 169(4), which prohibits the authority from imposing a condition on the premises licence which makes it impossible to comply with an operating licence condition;
- section 172(10), which provides that conditions may not relate to gaming machine categories, numbers, or method of operation;
- section 170, which provides that membership of a club or body cannot be required by attaching a condition to the premises licence (the Act specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and
- section 171, which prevents an authority imposing conditions in relation to stakes, fees, winnings or prizes.