

## APPLICATION FOR NEW PREMISES LICENCE & VARIATION OF PREMISE LICENCE 'SHIPLEYS, 38 EIGN GATE, HEREFORD. HR4 0AB.' – GAMBLING ACT 2005

Report By: Head Of Environmental Health And Trading Standards

### Wards Affected:

Central

#### 1. Purpose

To consider an application for a new premises licence and variation of premise licence in respect Shipleys, 38 Eign Gate, Hereford. HR4 0AB.

#### 2. Background Information

|  |  |   |
|--|--|---|
| Applicant                                    | <b>E &amp; J Investments Ltd</b>           |   |
| Solicitor                                    | <b>Roger Etchells (Chartered Surveyor)</b> |   |
| Type of application:<br><b>New/Variation</b> | Date received:<br><b>21/02/08</b>          | 28 Days consultation<br><b>19/03/08</b> |

#### 3. Preliminary Issue

The Gambling Act 2005 (Premises Licences and Provisional Statements)  
Regulations 2007 states: -

##### Notice of application

**12.—(1)** A person making an application must give notice of the application to each of the authorities which in accordance with section 157 are the responsible authorities in relation to the premises to which the application relates.

**(3)** A notice under paragraph (1) must be in the form specified in—

(a) Part 1 of Schedule 6, where the application is for a premises licence;

(b) Part 3 of that Schedule, where the application is to vary a premises licence;

**(5)** Paragraph (6) applies where a person has made an application—

(a) under section 159 for a premises licence

(b) under section 187 to vary a premises licence

**(6)** Where this paragraph applies the applicant must publish notice of his application—

(a) in a local newspaper or, if there is none, a local newsletter, circular or similar document, circulating within the licensing authority's area on at least one occasion during the period of ten working days starting with the day after the day on which the application is made to the authority; and

(b) by displaying a notice on the premises to which the application relates—

- (i) in a place at which it can conveniently be read by members of the public from the exterior of the premises;
- (ii) for a period of no less than 28 consecutive days starting on the day on which the application is made to the licensing authority

**Failure properly to publish notice of an application**

14.—(1) This regulation applies where a person, who publishes notice of his application under sub-paragraph (a) or (b) of paragraph (6) of regulation 12, fails to publish a proper notice of his application within the period provided for under the relevant sub-paragraph.

(2) For the purposes of paragraph (1), a person fails to publish a proper notice of his application if the published notice does not comply with the requirements of these Regulations as to the form or manner in which it is to be published.

(3) The applicant must publish notice of the application in a form and manner which complies with the requirements of these Regulations (other than as to the timing of the publication) as soon as practicable after the end of the period referred to in paragraph (1).

(5) The licensing authority may not grant the application until—

- (a) notice has been published by the applicant in accordance with paragraph (3); and
  - (b) the period referred to in paragraph (4) has elapsed,
- and if it purports to do so any licence issued by the authority shall be of no effect.

(6) Subject to paragraph (5), the licensing authority may disregard any irregularity in relation to the publication of the notice under sub-paragraph (a) or (b) of paragraph (6) of regulation 12.

4. The newspaper notification appeared within the Hereford Journal on Wednesday 27<sup>th</sup> February 2008.
5. Two notices appeared within the paper and both are head 'Notice of Application to Vary a Premises Licence Under the Gambling Act 2005'.
6. The trading name of the premise is not stated only the address '38 Eign Gate, Hereford HR4 0AB'.
7. The form and manner of the notice as required by the Regulations for a New Application is shown at Appendix 1 and in respect of an application to vary is shown at Appendix 2.
8. **Matter for Committee**  
The Committee are asked to decide whether the requirements of the Act and Regulations have been complied with and whether they consider that Regulation 14(5) applies.

## THE APPLICATION

### 9. **New Licence Application**

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

### 10. **Summary of Application**

The premise currently holds an Adult Gaming Centre premise licence which was granted under grandfather rights on 1<sup>st</sup> September 2007 when the Act commenced.

The application applies to split the current premise into two to allow 2 adult gaming centres within the premise.

### 11. **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 with exception of the Licensing Authority.

#### **Interested Parties**

No representation has been received from any interested party.

### **Attaching of conditions to a licence**

12. The Gambling Act under Section 167 and 168 provides Mandatory and Default conditions to be attached to different categories of premise licences. In respect of an Adult Gaming Centre these are: -

#### **Mandatory conditions attached to every premises licence**

- The summary of the terms and conditions of the premises licence issued under section 164(1)(c) of the 2005 Act shall be displayed in a prominent place within the premises.
- The layout of the premises shall be maintained in accordance with the plan.
- The premises shall not be used for—
  - (a) the sale of tickets in a private lottery or customer lottery, or
  - (b) the sale of tickets in any other lottery in respect of which the sale of tickets on the premises is otherwise prohibited.

#### **Mandatory conditions attached to adult gaming centre premises licences**

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. No customer shall be able to access the premises directly from any other premises in respect of which a licence issued under Part 8 of the Act, or a permit issued under Schedule 10, 12 or 13 to the Act, has effect.
3. 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 cease gambling at any gaming machine in order to do so.

4.—(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.

13. There are no default conditions attached to an Adult Gaming Centre.
14. 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. (default conditions)  
 (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'.

15. **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.

16. **Options: -**

There are a number of options available to committee

Any grant would be subject to the mandatory conditions and to any condition that Committee, at their discretion, attach under Section 169

The options available are

- Grant both the application for the new licence and the variation of licence
- Grant the new application but refuse the variation application
- Grant the variation but refuse the new application
- To reject both applications

17. **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.

### **Meaning of premises**

- 7.11** In the Act, 'premises' is defined as including 'any place'. Section 152 therefore prevents more than one premises licence applying to any place. But, there is no reason in principle why a single building could not be subject to more than one premises licence, provided they are for different parts of the building, and the different parts of the building can reasonably be regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, track, or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about sub-divisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.
- 7.12** In most cases the expectation is that a single building/plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean that 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.

- 7.13** With the exceptions of the non-gambling area of the regional casino, bingo clubs, tracks on race-days and licensed family entertainment centres, children will not be permitted to enter licensed gambling premises. Therefore businesses will need to consider carefully how they wish to configure their buildings if they are seeking to develop multi-purpose developments.
- 7.14** Licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:  
The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also that they are not permitted to be in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling where they are prohibited from participating.  
Entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not 'drift' into a gambling area.
- 7.15** The proper application of section 152 means that different premises licences cannot apply in respect of single premises at different times. There is no temporal element to a premises licence. Therefore, premises could not, for example, be licensed as a bingo hall on weekdays and a betting shop at weekends.

#### **Division of premises and access between premises**

- 7.16** An issue that may arise when division of a premise is being considered is the nature of the unlicensed area from which a customer may access licensed gambling premises. For casinos, bearing in mind the wide definition of a street, access might be from a foyer or other area, which the public might enter for purposes other than gambling. The precise nature of this public area will depend on the location and nature of the premises. Licensing authorities will need to consider whether the effect of any division is to create a machine shed-type environment with very large banks of machines, which is not the intention of the access conditions, or whether it creates a public environment with gambling facilities available if desired. Licensing authorities should, in particular, remember that where they have concerns about the use of premises for gambling, these may be addressed through licence conditions.
- 7.17** The Gambling Act 2005 (Mandatory and Default Conditions) Regulations<sup>5</sup> set out the access provisions for each type of premises. The broad principle is that there can be no access from one licensed gambling premises and another, except between premises which allow access to those under the age of 18. Under-18s can go into family entertainment centres, tracks, pubs and some bingo halls and clubs. So access is allowed between these types of premises only.
- 7.18** It should be noted that the Mandatory and Default Premises Licence Regulations define street as 'including any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping malls) whether a thoroughfare or not'. This is to allow access, for example, to casinos from hotel foyers.
- 7.19** There is no definition of 'direct access' in the Act or regulations. However, it could be said that there should be an area separating the premises concerned (eg a street or



cafe), which the public go to for purposes other than gambling, for there to be shown to be no direct access.

**7.20** The relevant access provisions for each premises type is as follows:

**Adult gaming centres**

No customer shall access the premises directly from any other licensed gambling premises.

**The Gambling Act 2005**

Section 152 states: -

(1) **A premises licence—**

(a) may not authorise the use of premises for activities of more than one of the kinds specified in section 150(a) to (e) (subject to sections 172 to 174 and subsection (2) below), and

**(b) may not be issued in respect of premises if a premises licence already has effect in relation to the premises**