

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee B
Report of:	Acting Director of Regulation & Enforcement
Date of Meeting:	Tuesday 19th July 2016
Subject:	Gambling Act 2005 Variation of a Licensed Premises Gaming Machine Permit
Premises	Hunters Moon, 220 Coleshill Road, Birmingham, B36 8BE
Ward affected:	Hodge Hill
Contact Officer	David Kennedy, Principal Licensing Officer, 0121 303 9896, licensing@birmingham.gov.uk

1. Purpose of report:
<p>Officers have delegated authority to Grant Permits in respect of 4 Licensed Premises Gaming Machines, Category C & D in an Alcohol Licensed Premises.</p> <p>This application seeks permission to operate: 6 Category C Gaming Machines (the number currently permitted is 5), and; 2 Category D Machines (no change).</p>

2. Recommendation:
<p>The Sub Committee is requested to consider an application to operate a total of 8 Gaming Machines on Alcohol Licensed premises.</p>

3. Brief Summary of Report:
<p>An application for the variation of a Licensed Premises Gaming Machine Permit was received on 16th February 2016.</p>

4. Compliance Issues:
4.1 Consistency with relevant Council Policies, Plans or Strategies:
<p>The report complies with the City Council's Statement of Licensing Principles and the Council's Corporate Plan to improve the standard of all licensed persons, premises and vehicles in the City.</p>

<p>5. Relevant background/chronology of key events:</p> <p>Greene King Brewing and Retailing Limited submitted an application for the variation of a Licensed Premises Gaming Machine Permit on 16th February 2016 for the Hunters Moon, 220 Coleshill Road, Birmingham, B36 8BE.</p> <p>Licensing Sub-Committee B considered this matter on 17th May 2016, and were minded to refuse the application. A copy of the decision is attached at Appendix 1.</p> <p>In accordance with the provisions of Schedule 13, Paragraph 6 of the Gambling Act 2005 and the Gambling Commission Guidance issued under S25 Gambling Act 2005, the applicant was invited to make oral representations, written representations or both in response to the above.</p> <p>The application, including supplementary information in support of the application, is attached at Appendix 2.</p> <p>On 8th July 2016, the applicant submitted further information in support of the application. A copy of this information is attached at Appendix 2a.</p> <p>Birmingham City Council Licensing Enforcement visited the premises on 24th February 2016, and initially objected to the application however at the Hearing on 17th May 2016 the Licensing Enforcement Officer withdrew their representation as they were satisfied with the re-siting of the additional Category C Machine.</p> <p>A copy of the current Gaming Machine Permit issued under the Gambling Act 2005, which permits 5 Category C machines and 2 Category D machines, is attached at Appendix 3.</p> <p>Gaming Machine Categories by maximum stake and maximum prizes available, see attached Appendix 4.</p> <p>Site Location Plans at Appendix 5.</p> <p>Where an application for a licensed gaming machine permit is made, the licensing authority shall consider it having regard to the licensing objectives, any relevant guidance issued by the Commission under section 25 and such other matters as they think relevant.</p> <p>The licensing objectives are:</p> <ol style="list-style-type: none"> 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 c. Protecting Children and other vulnerable persons from being harmed or exploited by gambling.
<p>6. List of background documents:</p> <p>Licensing Sub Committee B Decision of 17th May 2016, Appendix 1 Application Form and supporting information, Appendix 2 Current Gaming Machine Permit, Appendix 3 Gaming Machine Categories, Appendix 4 Site Location Plans, Appendix 5</p>
<p>7. Options available</p> <ol style="list-style-type: none"> a) Grant the application b) Refuse the application c) Grant the application in respect of; <ol style="list-style-type: none"> (i) A smaller number of machines than is specified in the application (ii) A different category of machines from that specified in the application, or (iii) both



BIRMINGHAM CITY COUNCIL
LICENSING SUB COMMITTEE - B

17 MAY 2016

Hunters Moon, 220 Coleshill Road, Birmingham, B36 8BE

In accordance with the provisions of Schedule 13, Paragraph 6 of the Gambling Act 2005, and the Gambling Commission Guidance issued under S25 Gambling Act 2005, the Sub-Committee are minded to refuse the application by Greene King Brewing and Retailing Limited, for the variation of a Licensed Premises Gaming Machine Permit in respect of Hunters Moon, 220 Coleshill Road, Birmingham, B36 8BE.

In reaching this interim decision, the Sub-Committee was mindful of the promotion of the Gambling Objectives in the Act, particularly Protecting children and other vulnerable persons from being harmed or exploited by gambling.

The Sub-Committee's reasons for reaching this interim decision, for an application to vary an existing Licensing Premises Gaming Machine Permit are due to concerns regarding the impact of increasing the number of Category "C" machines from 5 to 6, within the existing layout of the premises.

Members of the Sub-Committee were not persuaded that the re-siting of an existing Category "C" machine further away from the "distraction zone" was sufficient to remove the risk of children, and other vulnerable persons from being harmed or exploited by gambling, particularly with the proposed addition of a further Category "C" machine, albeit in the "bar side" of the premises.

The Sub Committee carefully considered the application, including policies and procedures, put forward by the applicant and the likely impact of the application but were not persuaded at this stage that the applicant would properly promote the Gambling objectives within the Gambling Act 2005, particularly protecting children and other vulnerable persons from being harmed or exploited by gambling.

In accordance with the provisions Schedule 13, Paragraph 6 of the Gambling Act 2005, and the Gambling Commission Guidance issued under S25 Gambling Act 2005, the Sub Committee will invite the applicant to make oral representations, written representations or both in response to the above at a hearing of a Licensing Sub Committee on a date to be communicated to them in writing.

**delete as applicable*

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At the future Hearing of Licensing Sub Committee, the applicant will also be asked to clarify whether the applicant complies with the Council's Gambling Act Statement of Licensing Principles with regard to:

This authority will also ensure that where category C or above machines are offered in premises to which children are admitted:

- ☐ *all such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;*
- ☐ *only adults are admitted to the area where these machines are located;*
- ☐ *access to the area where the machines are located is supervised;*
- ☐ *the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and*
- ☐ *at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.*

In reaching this interim decision, the Sub-Committee has given due consideration to the City Council's Statement of Gambling Principles, the Guidance issued under Section 25 of the Gambling Act 2005 by the Commission, the application for a Licensed Premises Gaming Machine Permit, and the submissions made at the hearing by the applicant.

All parties are reminded that under the provisions contained within Schedule 13 to the Gambling Act 2005, the applicant has the right of appeal against the final decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

V:\Council Regulatory Team\Licensing Committee\Licensing Act\ GA05 Gaming machine permit decision v3.0.doc

**NOTIFICATION OF 2 OR LESS GAMING MACHINES or
GAMING MACHINE PERMIT APPLICATIONS (i.e. for greater than 2 machines) for:
CONVERSION / NEW / VARIATION / TRANSFER**

(FOR USE BY PREMISES LICENSED TO SUPPLY ALCOHOL FOR CONSUMPTION ON THE PREMISES)

Please refer to guidance notes at the back of this form before completing

<p>Birmingham City Council Licensing Section Crystal Court Aston Cross Business Village 50 Rocky Lane Aston</p>	<p align="center">BCC REGULATION & LICENSING SECTION</p> <p align="center">DATE RECEIVED</p> <p align="center">16 FEB 2015</p> <p align="center">022141 ELSD CHD</p> <p align="center">(£100)</p>												
<p>SECTION A – What do you want to do?</p> <p>1. Please indicate what you would like to do</p> <p>a) Notify licensing authority that you intend to provide up to a maximum total of 2 gaming machines category C and / or D (if you choose this option then please complete sections D and E) <input type="checkbox"/></p> <p>b) Apply to convert an existing Section 34 permit issued under the Gaming Act 1968, into a licensed premises gaming machine permit (i.e. for more than 2 gaming machines) (if you choose this option then please complete sections B, D and E) <input type="checkbox"/></p> <p>c) Apply for a new licensed premises gaming machine permit (if you choose this option then please complete sections B, D and E) <input type="checkbox"/></p> <p>d) Apply to vary an existing licensed premises gaming machine permit (if you choose this option then please complete sections B, D and E) <input checked="" type="checkbox"/></p> <p>e) Apply to transfer an existing licensed premises gaming machine permit (if you choose this option then please complete sections C, D and E) <input type="checkbox"/></p>													
<p>SECTION B – Application for grant (includes <u>conversion</u>, <u>new</u> and <u>variation</u> applications)</p> <p>2. How many gaming machines are you currently authorised to provide and if this is a new or variation application, how many do you wish to provide? (please complete the boxes in the table)</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="width: 20%;">Category machine</th> <th style="width: 40%;">Number currently authorised to provide</th> <th style="width: 40%;">Number wish to provide (new or variation)</th> </tr> </thead> <tbody> <tr> <td align="center">C</td> <td align="center">5</td> <td align="center">6</td> </tr> <tr> <td align="center">D</td> <td align="center">2</td> <td align="center">2</td> </tr> <tr> <td align="center">Total</td> <td align="center">7</td> <td align="center">8</td> </tr> </tbody> </table> <p>3. If you are currently authorised to provide more than 2 machines, please provide your existing Section 34 Gaming Act 1968 permit, or provide reasons stating why it cannot be provided.</p> <p align="right">Existing permit provided* <input checked="" type="checkbox"/></p> <p>(reasons why existing permit cannot be provided)</p> <p>.....</p> <p>.....</p>		Category machine	Number currently authorised to provide	Number wish to provide (new or variation)	C	5	6	D	2	2	Total	7	8
Category machine	Number currently authorised to provide	Number wish to provide (new or variation)											
C	5	6											
D	2	2											
Total	7	8											

*Please keep a copy of your existing permit on the premises to which it relates.

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<p>Section C – Application for permit <u>transfer</u> (i.e. where a transfer has been requested for the Licensing Act 2003 premises licence)</p> <p>4. Name of person requesting the transfer</p> <p>.....</p> <p>5. Confirmation that an application to transfer the relevant Licensing Act 2003 Premises Licence has been:</p> <div style="text-align: right; margin-right: 50px;"> <p>Requested <input type="checkbox"/></p> <p>Granted <input type="checkbox"/></p> </div> <p>6. Please provide your existing permit, or provide reasons stating why it cannot be provided</p> <div style="text-align: right; margin-right: 50px;"> <p>Existing permit provided <input type="checkbox"/></p> <p>Reasons why existing permit cannot be provided</p> </div> <p>.....</p> <p>.....</p>	
<p>Section D – General Information</p> <p>7. Name of Premises Hunters Moon</p> <p>8. Address of Premises 220 Coleshill Road Birmingham B63 8BE</p> <p>9. Telephone number of Premises</p> <p>10. Name of existing Premises Licence holder Greene King Brewing and Retailing Limited</p> <p>11. Address of Premises Licence holder (if different from 8 above)</p> <p>Westgate Brewery, Bury St Edmunds Suffolk IP33 1QT</p> <p>12. Telephone number (daytime) of Premises Licence holder</p> <p>13. E-mail address of Premises Licence holder (where available)</p> <p>.....</p> <p>14. Name, address, telephone and e-mail of agent (e.g. solicitor) if submitted on behalf of the applicant</p> <p style="text-align: center;">Select Gaming Ltd Suite 10 Parkside Business Centre Plumpton Road Hoddesdon Herts EN11 0ES.</p> <p>15. Licensing Act 2003 Premises Licence Reference (i.e. number)</p> <p>.....</p>	

**NOTIFICATION OF 2 OR LESS GAMING MACHINES or
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(FOR USE BY PREMISES LICENSED TO SUPPLY ALCOHOL FOR CONSUMPTION ON THE PREMISES)

Section E – Fee and Signature(s)

I enclose a sum of (£ 100)* (cheques should be made payable to Birmingham City Council .)



I understand that I must comply with the Gaming Machine Code of Practice for Alcohol Licensed Premise Permits and Permissions issued by the Gambling Commission. (see guidance note 8)

Please note: It is an offence under section 342 of the Gambling Act 2005 if a person, without reasonable excuse, gives to a licensing authority for a purpose connected with that Act information which is false or misleading.

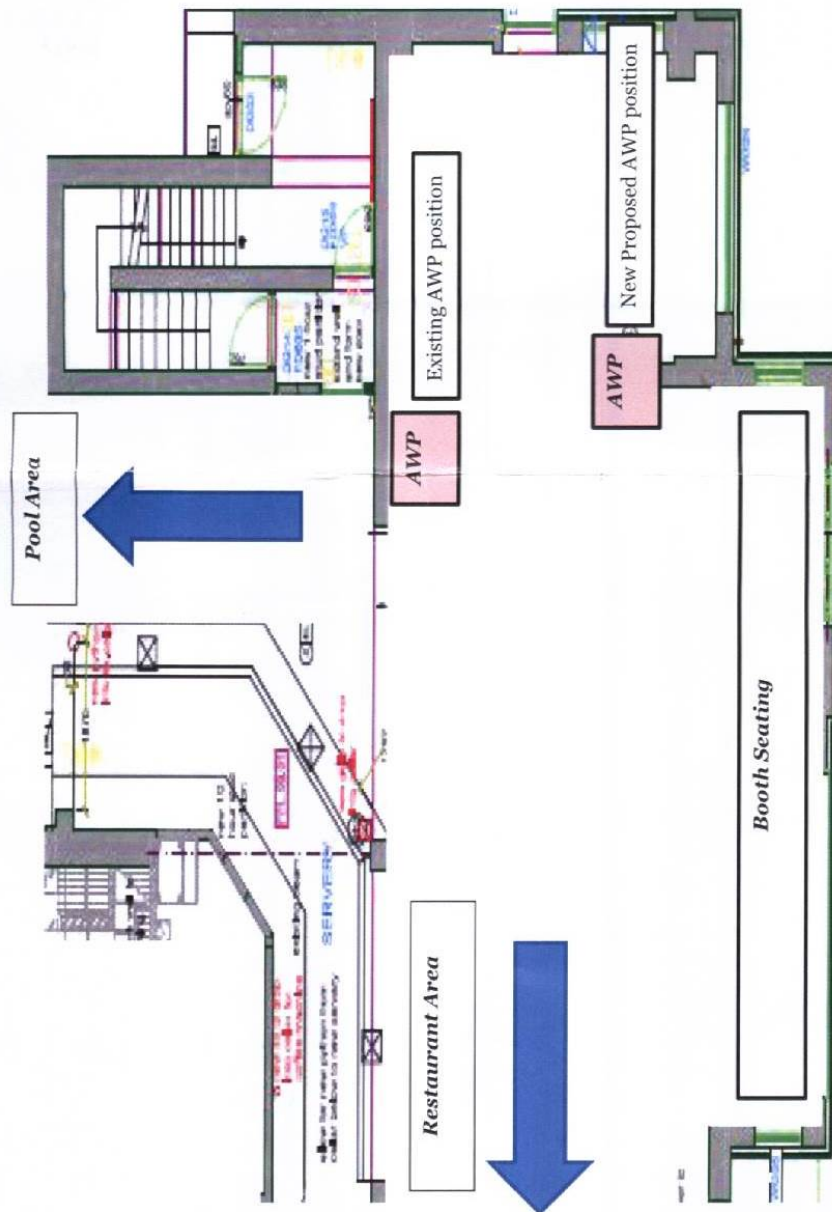
Dated 12th February 2016

Signed (by or on behalf of Licensing Act 2003 Premises Licence holder):-.....

Print Name.....

* If you wish to have a maximum of 2 gaming machines then the fee payable is £50. If you wish to have more than 2 gaming machines then the fee payable is £150 for new applications and £100 for Section 34 (Gaming Act 1968) holders.

Huntermoon



Appendix 2 cont. Applicants – Supporting Information

To: Birmingham Council Licensing

Date:

Re: Permit Application at the Hungry Horse, Hunters Moon, 220 Coleshill Road, B63 8BE

Dear Annette,

I am writing in response to your recent correspondence regarding the permit application at the Hunters Moon Hungry Horse (address shown above) & the enforcement Officers subsequent recommendation to refuse this. My thanks for sharing this recommendation with me before the permit hearing takes place.

I enclose a plan showing the proposed position of the additional Category C gaming machine (noted as red on plan), with all other Gaming Machine positions shown on the plan. The new Gaming Machine position will be sited in the over 18's area of the bar (as shown on plan).

I am appreciative of the time and effort spent so far in examining our application and in the Licencing Enforcement Officer taking the time to visit the premises. I would like though to take this opportunity to correct some inaccuracies contained within the report we received following this visit. The report states: *'In Sports area 1 'category C' & '2 category D' machines, in the Bar area '1 category C' machine & in the Lounge area 3 'non complex' category D machines & a category D machine in operation'*

The Hunters Moon has 5 Category C Gaming Machines which are all made available for customer use, four of these are in the bar side of the pub and one in the dinning side. In addition to these Category C Gaming Machines there are also 2 Category D Gaming Machines in the dinning side. Just to be clear customers can dine in the bar side or drink in the dining side.

I've not been able to establish with whom the Licencing Officer spoke with at the pub, although I have established it wasn't the General Manager or the Deputy Manager. To be clear there is no plan to remove a section of seating to accommodate an additional Gaming Machine, there are however other suitable locations where an additional Gaming Machine could be situated.

The report states 'it could be seen that the pub is a restaurant aimed at families'. The Hunters Moon is branded Hungry Horse and is aimed at a broad range of target customers. It may help the Licencing Committee to know that there is a higher level of drink sales than food sales.

Compliance with the Gambling Act, Licencing Conditions and Codes of Practice as well as upholding the licencing objectives of the Gambling Act are very important to Greene King.

We are fully aware of our responsibilities to adequately supervise all gaming machines and to this effect we have in place the following procedures:

- All gaming machines are fully supervised by means of either being in line of sight from the bar, being covered by CCTV and by staff frequently being active in the area in which gaming machines are placed.
- The proposed additional Category C gaming machine will be supervised by means of the Bar staff in the area & also CCTV.
- All staff, have been trained that no person under the age of 18 may play a gaming machine, in the Hunters Moon, we have in place a think 21 policy.
- All staff are trained that if someone who appears under the age of 21 attempts to play a gaming machine they must be challenged and asked to produce ID. Acceptable ID includes a

passport, photo driving licence or PASS card. Anyone who appears under 21 who cannot produce appropriate ID is prevented from playing on a gaming machine.

- All of the category C gaming machines installed at our premises have clear signage to show they are not to be used by under 18's and also have details of where a customer may get help should they develop a problem with gambling.
- All gaming machines are positioned so that a customer playing them must cease doing so should they wish to use the ATM.

To date we have not have an instance of a customer requesting that they are self-excluded from our premises.

Customer demand is such that a further Category C gaming machine is required.

In response to your letter, we have also taken action to move the category C Gaming Machine sited in the dining side further away from the distraction zone.

The report states 'the number of machines will not satisfy the requirement that gambling at the premises remain ancillary to the sale of alcohol'. The premises operates with sales in excess of £40,000 a week, through food & drink, machine sales are less than 10% of this. Machines operate in seven square foot of this business currently, which is spread over approximately 5,000 square foot and operates over 200 covers for customers to eat & drink. In this respect the number of machines in accordance with square footage of the business or the overall sales shows that gambling is purely ancillary to the business of the pub.

I would happy to arrange to meet with you to discuss or expand upon any of these points either at your offices or at the Hunters Moon. I can also make myself available to attend the Licencing Hearing to discuss this permit application.

Yours Sincerely

Craig Taylor

Craig Taylor
Machines Manager – Greene King

Appendix 2a – Applicants further supporting information.

**HUNTERS MOON
220 COLESHILL ROAD
BIRMINGHAM
B36 8BE**

APPLICATION TO VARY LICENSED PREMISES GAMING MACHINE PERMIT APPLICANT'S REPRESENTATIONS

Gambling Act 2005

The Gambling Act 2005 (the Act) provides qualifying alcohol licensed premises with the ability to make gaming machines available for use on their premises.

In order to qualify for the entitlement the alcohol licensed premises must satisfy the following criteria:-

- They must have the benefit of an on-premises alcohol licence which authorises the supply of alcohol for consumption on the licensed premises.
- The premises must contain a bar at which alcohol is served for consumption on the premises.
- There must be no requirement that alcohol is served only with food.
- The entitlement only applies at a time when alcohol may be supplied in reliance on the alcohol licence.

Alcohol licensed premises which satisfy the above criteria have an automatic entitlement to provide a maximum of 2 gaming machines of category C or D.

The automatic entitlement does not require any application to be made to the licensing authority but will only come into effect once the alcohol licence holder has sent to the licensing authority written notice of their intention to make gaming machines available for use and paid the relevant fee.

An alcohol licence holder who wishes to provide more than 2 category C or D gaming machines may apply to the licensing authority for a licensed premises gaming machine permit.

The Act contains no limit on the number of gaming machines which may be applied for or granted.

A category C gaming machine is subject to a maximum stake of £1.00 and a maximum prize of £100.00.

A category C gaming machine may only be played by someone aged 18 or over.

A category D gaming machine may be played by a person of any age and is subject to the following stake and prize limits:-

- Money prize machine – maximum stake 10p, maximum prize £5.00.
- General – maximum stake 10p, maximum prize value £8.00 (£5.00 money prize).
- Non-money prize machine – maximum stake 30p, maximum prize value £8.00.
- Crane grab machine – maximum stake £1.00, maximum prize value £50.00.
- Coin pusher – maximum stake 20p, maximum prize value £20.00 (only £10.00 or less in money).

It is a condition of the Act that gaming machines provided on alcohol licensed premises must comply with a Code of Practice issued by the Gambling Commission.

Code of Practice

In August 2014 the Gambling Commission published the latest version of the Code of Practice for gaming machines in clubs and premises with an alcohol licence.

The Code of Practice states that compliance with the following provisions is a condition of the licensed premises gaming machine permit, and failure to do so could result in revocation of the permit:-

- All gaming machines situated on the premises must be located in a place within the premises so that their use can be supervised, either by staff whose duties include such supervision (including bar or floor staff) or by other means.
- Permit holders must have in place arrangements for such supervision.
- All gaming machines situated on the premises shall be located in a place that requires a customer who wishes to use any ATM made available on the premises to cease gambling at the gaming machines in order to do so. "ATM" means a machine located on the premises, which enables a person using it to obtain cash by use of a credit or debit card.

The Code goes on to include a provision relating to access to gambling by children and young persons. It states that compliance with this section is not a condition of the permit. However it sets out good practice in this area and the Commission considers it should be implemented by permit holders:-

- Permit holders should put into effect procedures intended to prevent under age gambling. This should include procedures for:-
 - Checking the age of those who appear underage.
 - Refusing entry to anyone unable to produce an acceptable form of identification.

- Permit holders should take all reasonable steps to ensure that all relevant employees understand their responsibilities for preventing underage gambling. Permit holders should only accept identification which:-
 - Contains a photograph from which the individual can be identified.
 - States the individual's date of birth.
 - Is valid.
 - Is legible and has no visible signs of tampering or reproduction.
- The Commission considers acceptable forms of identification to include any identification carrying the PASS logo (for example Citizen card or Validate), a driving licence (including provisional licence) with photo card or a passport.
- Procedures should be in place for dealing with cases where a child or young person repeatedly attempts to gamble on category C machines (including oral warnings, reporting the offence to the Commission and police), and making available information on problem gambling.

The Code also includes a section on complaints and disputes which is not a condition of the permit but sets out good practice in this area.

The Act requires category C and other adult only gaming machines to be located in an area for adults only except where category C machines are provided in accordance with:-

- Notification under the automatic entitlement for alcohol licensed premises.
- A licensed premises gaming machine permit.

Licensed Premises Gaming Machine Permit

The Act provides that a licensing authority shall consider an application for a licensed premises gaming machine permit having regard to:-

- The licensing objectives.
- Any relevant guidance issued by the Commission under Section 25.
- Such other matters as they think relevant.

A permit must specify the number and category of gaming machines which it authorises.

A licensing authority may not attach conditions to a permit.

The licensing authority which issued the permit may cancel it, or may vary the number or category (or both) of gaming machines authorised by it, if they think that:-

- It would not be reasonably consistent with pursuit of the licensing objectives for the permit to continue to have effect.
- Gaming has taken place on the premises in purported reliance on the permit but otherwise than in accordance with the permit or a condition of the permit.
- The premises are mainly used or to be used for making gaming machines available.
- An offence under this Act has been committed on the premises.
- As soon as is reasonably practicable after refusing an application a licensing authority shall notify the applicant of:-

- The refusal.
- The reasons for it.

The applicant for a permit may appeal to the Magistrates Court if the licensing authority:-

- Rejects an application for a permit.
- Grants an application for a permit in respect of a smaller number of machines than that specified in the application or a different category of machines from that specified in the application (or both).

On an appeal the Magistrates Court may:-

- Dismiss the appeal.
- Substitute for the decision appealed any decision that the licensing authority could have made.
- Remit the case to the licensing authority to decide in accordance with a direction of the court.
- Make an order about costs.

Statement of Principles

Birmingham City Council's Statement of Principles is effective from 1st May 2016 and Part C (3) on page 31 contains provisions relating to licensed premises gaming machine permits.

The Statement of Principles provides that the licensing authority will generally have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there

will be sufficient measures to ensure that persons under 18 years of age do not have access to the adult only gaming machines.

Measures which will satisfy the authority that there will be no access may include:-

- The adult machines being in sight of the bar or in the sight of staff who will monitor that the machines are not being used by those under 18.
- Notices and signage may also be of help.

With regard to the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets/helpline numbers for organisations such as GamCare.

The Statement of Principles goes on to provide that the licensing authority will have regard to the licensing objectives, and may also take into account any matters that are considered relevant to the application. These may include:-

- The appropriate siting of gaming machines in areas where children are not normally permitted.
- The size of the premises.
- The supervision of gaming machines at all times when the premises is open.
- Notices by each gaming machine specifying no person under 18 years old are permitted to use the gaming machine.
- Age verification checks.
- Ensuring that members of staff are appropriately trained.
- Display of posters and information leaflets for organisations set up to assist people wishing to seek help and advice regarding gambling related issues.

The Variation Application

The Hunters Moon is operated under the "Hungry Horse" style. As such it is a public house which has a substantial food offering but is not a restaurant. The Hungry Horse style of operation appeals to a broad range of clientele, both young and old.

The premises qualify for the entitlements under the Act and currently have the benefit of a licensed premises gaming machine permit which authorises 5 category C gaming machines and 2 category D gaming machines.

The premises are basically divided into two areas, one which is predominantly used for dining and the other which is predominantly used for drinking.

Currently 4 of the category C gaming machines are located in the bar area of the premises. The other category C machine is located in the dining area together with the 2 category D gaming machines.

Although the predominant use of the premises is divided between dining and drinking it is possible for customers to have a meal anywhere throughout the premises with the result that there are in excess of 200 covers available for customers to dine and drink.

The total trading area of the premises is approximately 5,000 square feet of which approximately 7 square feet is currently taken up by the 7 gaming machines.

The plan submitted with these representations shows the location of the existing gaming machines and the proposed location of the additional category C gaming machine which is the subject of the current application.

If the application is granted the additional category C machine will be located in the adult only bar area.

Licensing enforcement team

Following receipt of the application a member of the licensing enforcement team visited the premises on 24th February 2016 and made a number of observations:-

- Reference was made to the current licensed premises gaming machine permit and locations of the machines authorised by the permit. The information concerning the locations was slightly incorrect in that it refers to 8 gaming machines whereas only 7 are provided.
- The report confirmed that all machines are visible to members of staff working in the relevant areas.
- Reference is made to a conversation with a "duty manager" but neither the general manager or duly manager recall having any such conversation.
- Whichever member of staff was involved in the conversation provided incorrect information as there is no intention to remove any seating to accommodate an additional gaming machine.

The licensing enforcement team make reference to a visit to the premises on 10th February 2016 and state that the pub is mainly a restaurant aimed for families.

The recommendation refers to an indoor children's play area and a separate sports area which offers a pool table and gaming machines.

The Team object to the application as it would raise concern in promoting the licensing objectives and in particular the protection of children and other vulnerable persons from being harmed or exploited by gambling.

The recommendation goes on to state that the Team considers the number and category of gaming machines applied for would not satisfy the requirement that gambling at the premises remains ancillary to the main purpose being the sale of alcohol and would be deemed excessive given the size and layout of the premises.

Licensing Sub-Committee's Interim Decision

In a letter dated 24th May 2016 the licensing authority advised the applicant's agent that the sub-committee were minded to refuse the application.

The letter goes on to state that in reaching this interim decision, the sub-committee were mindful of the promotion of the gambling objectives in the Act particularly protecting children and other vulnerable person from being harmed or exploited by gambling.

At the hearing of the licensing sub-committee the letter states that the applicant will be asked to clarify whether the applicant complies with the Council's Gambling Act Statement of Licensing Principles. There is then reference to a specific section in the Statements of Principles which can be found on page 17. This section relates to applications for premises licences and is not relevant to an application for a licensed premises gaming machine permit.

Applicant's Response

The application for variation of the existing licensed premises gaming machine permit has been validly made in accordance with the procedure contained in the Act.

There has been no criticism of the way in which the premises have operated in accordance with the existing licensed premises gaming machine permit. In particular, there has been no action taken by the licensing authority to remove the existing permit under any of the grounds contained in the Act.

The Greene King group of companies are currently responsible for approximately 3,000 alcohol licensed premises.

Gaming Machines are provided in a substantial number of those premises under a combination of Notifications and Licensed Premises Gaming Machine Permits.

Under the provisions of the Licensing Act 2003 the applicant is aware of the need to comply with the licensing objectives under that Act which include the protection of children from harm.

As such, in accordance with the applicant's responsibilities under the Licensing Act 2003 there is a regime in place which includes:-

- A requirement to implement an age verification policy to prevent the sale of alcohol to, or consumption of alcohol by, persons under 18 years of age.
- Supervision of the premises to prevent the sale of alcohol to, or consumption of alcohol by, persons under 18 years of age.
- Training of staff to prevent the sale of alcohol to, or consumption of alcohol by, persons under 18 years of age.
- The applicant's policies and procedures which relate to the above matters also include similar provisions in relation to gaming machines and are designed to:-
 - Prevent adult gaming machines being played by persons under 18 years of age.
 - Provide supervision of gaming machines to prevent adult gaming machines being played by persons under 18 years of age.
 - Train staff to prevent persons under 18 years of age playing adult gaming machines.

Further measures are implemented in order to protect vulnerable persons from being harmed by playing gaming machines.

As a consequence of implementing the above policies and procedures at the premises:-

- All gaming machines are fully supervised by a combination of methods including direct supervision by members of staff from the bar server, coverage by the internal CCTV system and members of staff working within the areas where gaming machines are located.
- Implementation of a Challenge 21 policy which requires members of staff who consider that anyone who appears to be under 21 years of age to produce an acceptable form of identification before they are allowed to play a category C gaming machine.
- Acceptable forms of identification include a passport, photocard driving licence or PASS card. Anyone who appears under 21 who cannot produce an acceptable form of identification to prove their age will not be allowed to play a category C gaming machine.
- All members of staff receive training in respect of these measures.
- All of the category C gaming machines made available at the premises have clear signage stating that they are not to be used by persons under 18.
- All category C gaming machines made available at the premises have notices containing details where customers may obtain help should they have concerns regarding gambling addiction or a similar problem.
- All gaming machines provided at the premises are located in positions which require customers to cease playing a machine in order to use the ATM.

Throughout the period of time that gaming machines have been provided by the applicant at the premises there have been no complaints concerning the promotion of the licensing objective relating to children and vulnerable persons contained in the Act, in particular:-

- There have been no suggestions that individuals under 18 years of age are allowed to play category C gaming machines.

- There is no suggestion that vulnerable persons are allowed to play gaming machines.
- No customers have requested assistance concerning gambling addiction or a similar problem and there has been no request by a customer to be self excluded from the premises.

In an effort to address the concern of the Licensing Enforcement Team regarding the location of a category C in the dining area of the premises the applicant would propose moving the machine away from its current location.

The Licensing Enforcement Team refer to a requirement that gambling at the premises remains ancillary to the main purpose being the sale of alcohol. There is no such legal requirement in licensing or gambling legislation but in any event it will not be the case in respect of these premises:-

- The total weekly income from food and drink sales is in excess of £40,000.00.
- The total weekly income from machine sales is less than £4,000.00.
- The total trading area of the premises is approximately 5,000 square feet.
- The existing gaming machines occupy approximately 7 square feet of the premises.
- The existing gaming machines provided at the premises comply with all relevant provisions of the Act.
- The gaming machines are provided in compliance with the Code of Practice issued by the Gambling Commission.
- The existing gaming machines and the additional machine would be fully compliant with all the relevant provisions of the licensing authority's Statement of Principles.

There is no evidence to suggest that the existing gaming machines have been made available in breach of any of the licensing objectives but, in particular, the objective concerning the protection of children and other vulnerable persons from being harmed or exploited by gambling.

No such evidence has been provided that the provision of an additional category C gaming machine at the premises will be detrimental to any of the licensing objectives and, in particular, the objective concerning protection of children and other vulnerable persons.

There is no suggestion that the operation of the existing gaming machines and the provision of an additional category C gaming machine would be contrary to any provision contained in the Gambling Commission's Guidance to Licensing Authorities.

There has been no suggestion that the provision of the existing gaming machines is contrary to the licensing authority's Statement of Principles and there is no evidence to suggest that the provision of an additional category C gaming machine would be contrary to the Statement of Principles.

The Act requires the licensing authority to give reasons which are intelligible and adequate amongst other things (*Marathon Restaurant v London Borough of Camden* 2011).

There is also authority which states that the weight attached to the reasons given for a decision by the licensing authority must take into account their fullness and clarity, the nature of the issues and evidence (*R (Hope and Glory Public House Limited) v City of Westminster Magistrates* 2011).

Summary

The applicant has operated the premises with the benefit of a licensed premises gaming machine permit without any issue.

The applicant has made a valid request to provide one additional category C gaming machine at the premises.

The application has been opposed on two grounds:-

- Concern that the provision of the additional gaming machine will be detrimental to the licensing objectives, in particular the protection of children and vulnerable persons.
- The provision of an additional category C gaming machine will mean that gambling at the premises is no longer ancillary to the sale of alcohol.

There has been no evidence to suggest that the existing gaming machines have been operated in breach of the licensing objectives or any evidence to suggest that the applicant is incapable of providing an additional category C gaming machine in accordance with the licensing objectives.

There is no legal requirement in licensing or gambling legislation for gambling at the premises to remain ancillary to the sale of alcohol.

Even if there were such a requirement, the evidence clearly establishes that the provision of an additional category C gaming machine will not result in gambling becoming the main activity at the premises. On the contrary, the evidence establishes that gambling will remain an ancillary activity with the main activity being the sale of food and drink.

In all the circumstances, the licensing authority is asked to accept that the application:-

- Is not detrimental to any of the licensing objectives.

- Is not in contravention of any provision of the Gambling Commission's Guidance to Licensing Authorities.
- Does not give rise to any justifiable reason for refusing the application.

In the letter dated 24th May 2016 reference is made in the final paragraphs to the applicant's right of appeal and the possibility that if an appeal is unsuccessful the City Council is likely to ask the Court to make an order for costs against the applicant.

It must also be borne in mind that if the applicant is successful in any appeal it is possible to ask the Court to make an order requiring the Council to pay the applicant's costs. In considering any such application the Court will consider the reasons for refusing the application and the evidence provided in support of those reasons.

Dated 8th July 2016

Fraser Brown
Solicitors for the Applicant
84 Friar Lane, Nottingham, NG1 6ED



BIRMINGHAM CITY COUNCIL

This form is prescribed by regulation 4 of the Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007

Licensed Premises Gaming Machine Permit

No: 706 / 4

This licensed premises gaming machine permit authorises:

Greene King Brewing and Retailing Limited

to make gaming machines, of the category and number specified below, available for use on the following premises

Hunters Moon, 220 Coleshill Road, Birmingham, B36 8BE

Number of Category C Gaming Machines authorised by this permit: 5

Number of Category D Gaming Machines authorised by this permit: 2

Date on which this permit takes effect or is renewed:
04/03/2015

This permit is issued by:

Birmingham City Council
Licensing Section, Crystal Court, Aston Cross Business Village,
50 Rocky Lane, Aston, Birmingham, B6 5RQ

Licensing Section, Crystal Court, Aston Cross Business Village, 50 Rocky Lane, Aston, Birmingham, B6 5RQ

Appendix 4

Gaming Machines (Fruit Machine, Slot Machine) Categories

Gaming machines (fruit machines, slot machines) fall into categories depending on the maximum stake and prize available:

Machine category	Maximum stake (from January 2014)	Maximum prize (from January 2014)
A	Unlimited	Unlimited
<u>B1</u>	£5	£10,000 (with the option of a maximum £20,000 linked progressive jackpot on a premises basis only)
<u>B2</u>	£100	£500
<u>B3</u>	£2	£500
B3A	£2	£500
<u>B4</u>	£2	£400
<u>C</u>	£1	£100
<u>D non-money prize (other than crane grab machine)</u>	30p	£8
<u>D non-money prize (crane grab machine)</u>	£1	£50
<u>D money prize</u>	10p	£5
<u>D combined money and non-money prize (other than coin pusher or penny falls machines)</u>	10p	£8 (of which no more than £5 may be a money prize)
<u>D combined money and non-money prize (coin pusher or penny falls machine)</u>	20p	£20 (of which no more than £10 may be a money prize)



Birmingham City Council

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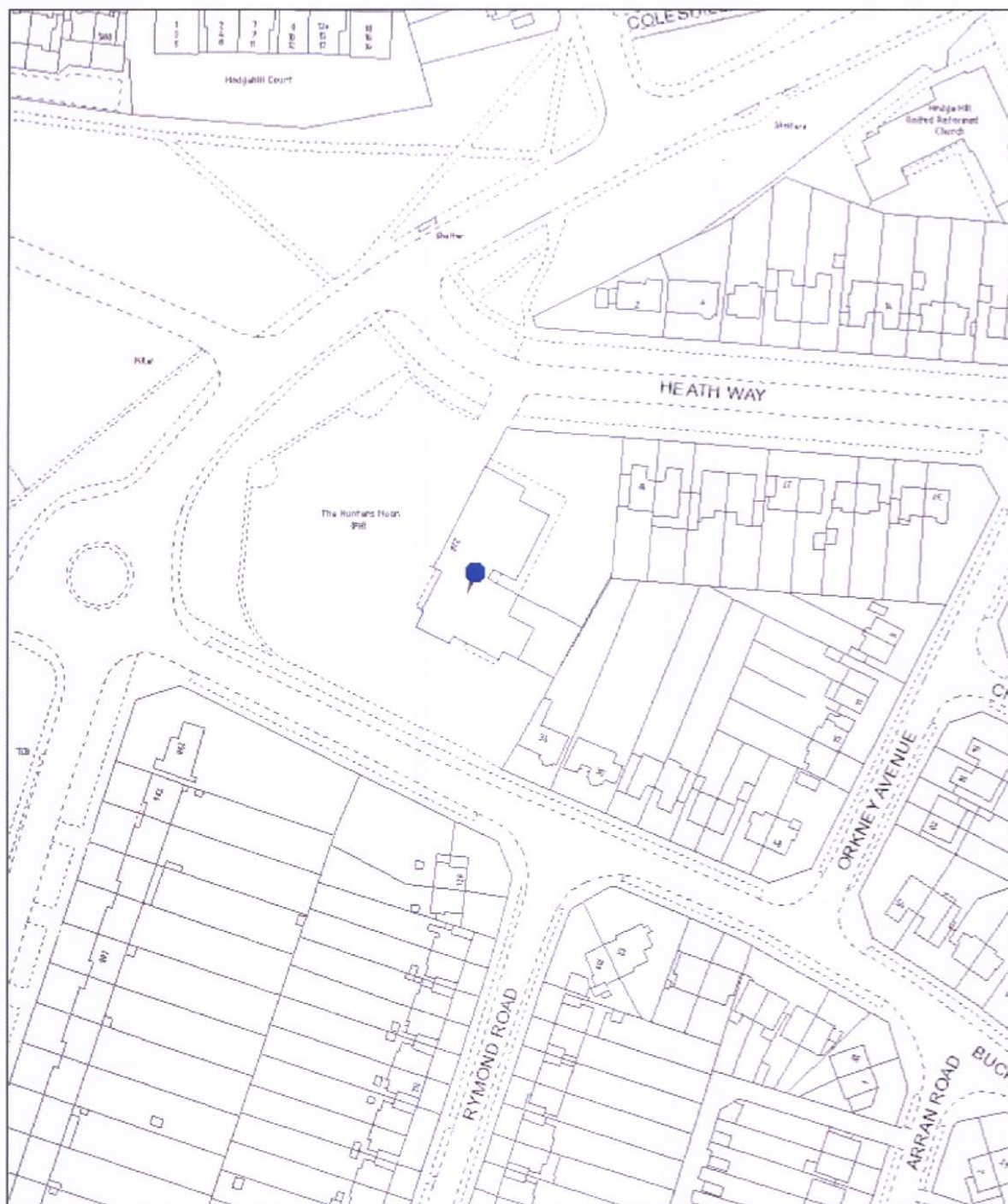


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