

**Objections to a licence by Merkur Slots, 220 High Street, Erdington, Birmingham, B23 6SJ (Cashino Gaming Limited).**

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Case Outline

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**Objectors**

- Printwise of 210 High Street, Erdington
- Radar Properties of 165-167 High Street, Erdington
- MA Retail Birmingham Limited, 215 High Street, Erdington
- H and N Taylors of 217 High Street, Erdington.

Attached to this case summary are:

- An area plan showing the site and other gambling premises
- Photograph of the front of the premises, from Streetview dated April 2019
- Applicant's recent staff adverts for staff at new premises referring to 24/7 trading
- Photograph showing "filler" machines

**1. Location**

1.1 Erdington is one of the larger district centres in Birmingham, which has unfortunately suffered a decline in recent years with increasing number of vacant units. The surrounding area has significant aged housing stock, which in recent years has come to be occupied by a significant number of residents who claim benefits. Some of those residents spend their days in the shopping centre.

1.2 As a result of the decline, Birmingham City Council's Cabinet in April 2020, agreed to apply to the Government future high streets fund for up to £13 million as part of a program of works to transform the area. The Council also hoped to attract £42 million in private investment to allow it to take the scheme forward. The objectors listed above have significant concerns (detailed in their representations) that a further gambling unit in this location will add to existing issues in relation to crime, disorder and public nuisance in the vicinity of the application premises.

1.3 Within 230 metres of the high street, currently there are three adult gaming centres (Shipley's at 243 High Street and 167a High Street and Admiral at 194 High Street). There are then Betfred betting shops at 239 High Street and 163 - 165 High Street. There is a Ladbrokes betting shop immediately opposite the application site at 225-337 High Street. There is a further William Hill betting shop which is close to this vicinity.

1.4 The applicant, Merkur Cashino, part of the Gauselmann Group is a German operator with operating licences in the UK. Cashino are one of the largest operators of AGCs in the United Kingdom and also operate large bingo halls of the traditional type. This application seeks a gambling premises licence in the former pawnbrokers trading as Albemarle and Bond at 220

High Street. It is understood, from the documents that are in the public domain, that this expansion is of a budget/basic operation, which intends to open for 24 hours of the day, 7 days of the week.

- 1.5 In addition, there are concerns that the advert for staff, highlights that at times they will be single staffed. The planning application for the premises to be allowed to trade, as requested, suggests that there will just five members of staff, this confirms the intention to single man the premises at quieter times.
- 1.6 The default hours for bingo premises (Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007) apply to the playing of bingo, not the opening times of the premises. This means that should the licence be granted gaming machines, which will make up a substantial part of the premises, can be played for 24 hours of the day.
- 1.7 In premises such as these, bingo is restricted to only being played between the hours of 09:00 and midnight, but machines can be operated 24/7.
- 1.8 The applicant has applied for a Bingo premises licence under the Gambling Act 2005, whilst applying for an AGC planning permission.

## **2. Legislation**

- 2.1 The relevant section of the Gambling Act is Section 153.

### **Section 153 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 (subject to paragraphs (a) and (b)),
- (d) in accordance with the statement published by the authority under section 349 (subject to paragraphs (a) to (c)).

- 2.2 In this Act a reference to the licensing objectives is a reference to the objectives of—

- (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, and
- (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

### **3. Gambling Commission Guidance to Licensing Authorities**

#### **Objective 1 : Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime**

5.3 Among other matters, licensing authorities may need to consider the location of premises in the context of this licensing objective. For example, in considering an application for a premises licence or permit that is in an area noted for particular problems with disorder, organised criminal activity etc, the licensing authority should think about what, if any, controls might be appropriate to prevent those premises being associated with or used to support crime. That might include conditions on the premises licence, such as a requirement for door supervisors. The requirement for conditions might be determined by the operator's own risk assessment or the local area profile carried out by the licensing authority, as detailed in Part 6.

5.4 A licensing authority will need to consider questions raised by the location of gambling premises when:

- formulating its statement of licensing policy
- receiving relevant representations to an application
- dealing with applications as a responsible authority in its own right
- considering applications before it.

5.5 In the context of gambling premises licences, licensing authorities should generally consider disorder as activity that is more serious and disruptive than mere nuisance. Factors to consider in determining whether a disturbance was serious enough to constitute disorder would include whether police assistance was required and how threatening the behaviour was to those who could see or hear it. There is not a clear line between nuisance and disorder and the licensing authority should take the views of its lawyers before determining what action to take in circumstances in which disorder may be a factor.

5.6 Regulatory issues arising from the prevention of disorder are likely to focus almost exclusively on premises licensing, rather than on operating licences. However, if there are persistent or serious disorder problems that an operator could or should do more to prevent, the licensing authority should bring this to the attention of the Commission so that it can consider the continuing suitability of the operator to hold an operating licence.

5.8 In relation to preventing disorder, licensing authorities have the ability under s.169 of the Act to attach additional conditions to premises licences, and are entitled to include a requirement for door supervision, as provided for in s.178 of the Act. If a person employed on door supervision would be required to hold a licence issued by the Security Industry Authority (SIA), that requirement will have force as though it were a condition on the premises licence. Further information on conditions on premises licences can be found in Part 9 of this Guidance.

#### **Objective 3 : Protecting children and other vulnerable persons from being harmed or exploited by gambling**

5.13 In exercising their powers under s.153, licensing authorities should consider whether staff will be able to adequately supervise the gambling premises, as adequate staffing levels is a factor to consider regarding the prevention of underage gambling. The Commission would expect the operator and the licensing authority to work together to consider how any impediments to the supervision of premises might be most appropriately remedied. Supervision also applies to premises that are themselves not age-restricted (eg bingo and family entertainment centre (FEC) premises) but which make gambling products and facilities available. 5 For example, The Safe Bet Alliance's Voluntary Code of Safety and Security National Standards for Bookmakers

5.14 Where a licensing authority considers the structure or layout of premises to be an inhibition or potential inhibition to satisfying this licensing objective, the licensee should consider what changes are required to ensure the risk is mitigated. Such changes might include the positioning of staff or CCTV, the use of floor-walkers and the relocation of the staff counter to enable direct line of sight. Licensing authorities will need to consider the proportionality of changes to the physical layout in relation to other measures that could be put in place.

5.17 The Act does not seek to prohibit particular groups of adults from gambling in the same way that it prohibits children. The Commission does not seek to define 'vulnerable persons' but it does, for regulatory purposes, assume that this group includes people who gamble more than they want to, people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance misuse relating to alcohol or drugs.

5.18 Licensing authorities need to consider, in relation to particular premises, whether any special considerations apply in relation to the protection of vulnerable persons. This could be a local risk that is reflected in the licensing authority's statement of policy. Any such considerations need to be balanced against the authority's objective to aim to permit the use of premises for gambling.

### **Section 153 Principles**

5.20 Whilst there is a presumption in favour of permitting the relevant premises to be used for gambling, the licensing authority may not do so unless satisfied that such use would be in accordance with this Guidance, any relevant Commission code of practice, its own statement of policy, and the licensing objectives.

### **Local Risk Assessments**

6.41 The Commission's Licence Conditions and Codes of Practice (LCCP) which were revised and published in February 2015, formalise the need for operators to consider local risks.

6.42 Social responsibility (SR) code 10.1.1 requires all premises licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in the licensing authority's statement of policy.

6.43 Licensees are required to undertake a local risk assessment when applying for a new premises licence. Their risk assessment must also be updated:

- when applying for a variation of a premises licence
- to take account of significant changes in local circumstances, including those identified in a licensing authority's statement of policy
- when there are significant changes at a licensee's premises that may affect their mitigation of local risks.

#### **4. Birmingham City Council Statement of Principles - Gambling Act 2005**

##### **PART C - PREMISES LICENCES: CONSIDERATION OF APPLICATIONS**

###### **1. General Principles**

###### **(iv) Location:**

This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives are relevant to its decision-making. This authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. The Licensing Authority may take into account the impact that the existence of premises may have on an area in so far as it is relevant to the licensing objectives. For example, the proposed operation of a new premises licence may not be reasonably consistent with the principles of the licensing objectives due to its proximity to:

- a school or other educational facility;
- a residential area with high concentration of families with children;
- a centre for children;
- a centre for vulnerable adults. The Licensing Authority will therefore consider representations from any responsible authority or interested party based on the impact on the licensing objectives if a particular application were to be granted.

The onus will be on the person making the representation to provide evidence to support their assertions that the addition of the premises would have the suggested impact on the licensing objectives. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated.

It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

###### **(x) Local Risk Assessments**

Since 6 April 2016, it has been a requirement of the Gambling Commission's Licence Conditions and Codes of Practice (LCCP), under Section 10, for licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at their premises and have policies, procedures and control measures to mitigate those risks.

In making risk assessments, licensees must take into account relevant matters identified in this policy. The LCCP goes on to say licensees must review (and update as necessary) their local risk assessments:

- to take account of significant changes in local circumstance, including those identified in this policy;
- when there are significant changes at a licensee's premises that may affect their mitigation of local risks; 20
- when applying for a variation of a premises licence; and
- in any case, undertake a local risk assessment when applying for a new premises licence.

The Council will expect the local risk assessment to consider as a minimum:

- whether the premises is in an area of deprivation;
- whether the premises is in an area subject to high levels of crime and/or disorder;
- the demographics of the area in relation to vulnerable groups;
- the location of services for children such as schools, playgrounds, toy shops, leisure centres and other areas where children will gather;
- significant presence of young children, both residents and visitors;
- high unemployment area;
- nearby homeless hostels;
- nearby gambling, alcohol, drug or mental health support facility;
- the area has a high number of rough sleepers/homeless people;
- the area has a specific ethnic population;
- pawn broker/pay day loan businesses in the vicinity;
- other gambling premises in the vicinity.

Information around these groups will be available in the Local Area Profile (LAP) In any case, the local risk assessment should show how vulnerable people, including people with gambling dependencies, are protected.

Other matters that the assessment may include:

- The training of staff in brief intervention when customers show signs of excessive gambling, the ability of staff to offer brief intervention and how the manning of premises affects this.
- Details as to the location and coverage of working CCTV cameras, and how the system will be monitored.
- The layout of the premises so that staff have an unobstructed view of persons using the premises.
- The number of staff that will be available on the premises at any one time. If at any time that number is one, confirm the supervisory and monitoring arrangements when that person is absent from the licensed area or distracted from supervising the premises and observing those persons using the premises.
- Arrangements for monitoring and dealing with under age persons and vulnerable persons, which may include dedicated and trained personnel, leaflets, posters, self-exclusion schemes, window displays and advertisements not to entice passers-by, etc.

- The provision of signage and documents relating to games rules, gambling care providers and other relevant information be provided in both English and the other prominent first language for that locality.
- Where the application is for a betting premises licence, other than in respect of a track, the location and extent of any part of the premises which will be used to provide facilities for gambling in reliance on the licence.

Such information may be used to inform the decision the Council makes about whether to grant the licence, to grant the licence with special conditions or to refuse the application.

This policy does not preclude any application being made and each application will be decided on its merits, with the onus being upon the applicant to show how the concerns can be overcome.

Local Risk Assessments must be kept on the individual premises and made available for inspection when requested by an authorised officer.

#### **Bingo premises (Part C Para 5 of the policy)**

Gambling Commission Guidance is that Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

The Licensing Authority will expect applicants to offer their own measures to meet the licensing objectives. However, appropriate measures/licence conditions may cover issues such as:

- proof of age scheme;
- CCTV;
- physical security measures on the premises;
- supervision of entrances/machines;
- physical separation of gambling areas where category C or above gaming machines are made available for use;
- supervision of age restricted areas of the premises;
- self-exclusion schemes;
- clear notices and signage externally and internally regarding age restrictions and restricted areas;
- members of staff appropriately trained;
- a notice specifying opening hours;
- reporting of any suspicious activity on the premises;
- policy and procedures regarding the employment of young persons (aged 16 and 17 where applicable);

- display of posters and information leaflets for organisations set up to assist people wishing to seek help and advice regarding gambling related issues such as GamCare.

This is not a mandatory, or exhaustive list, and is merely indicative of example measures. It is important that if children and young persons are allowed to enter premises licensed for bingo that they do not participate in gambling, other than on category D machines.

Where category C or above machines are made available in premises to which children and young persons are admitted the premises licence holder must ensure that:

- all such machines are located in an area of the premises separate 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 the machines are located is arranged so that it can be observed by staff employed by the operator or premises licence holder; and
- at the entrance to, and inside any such area there are prominently displayed notices indicating that access to the area is prohibited to persons under 18 years old.

The Licensing Authority will take into account any further guidance issued by the Gambling Commission in relation to the suitability and layout of bingo premises.

## **5. Conclusions**

5.1 The objectors invite the sub-committee to determine that they have been provided with insufficient information to satisfy them that the application is in accordance with the relevant Guidance issued by the Gambling Commission under Section 25 nor that it is reasonably consistent with the licensing objectives of:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

5.2 From the information provided by the applicant, it is clear that Merkur Slots is a machine led environment. It is not believed that bingo will be the primary activity. Its main function is to create as many category B3 machines as is possible.

5.3 Of major concern is the issue of single staffing at the premises. This in conjunction with the premises opening potentially for 24 hours a day 7 days a week is of real concern. This is compounded by the fact that there are inconsistencies between the LARA, conditions and witness statements provided by the applicant. It is difficult for the authority to be able to assess whether the premises licence holder will be able to protect children and vulnerable persons from harm or being exploited by gambling from the information that has been



provided. The objectors feel it would be impossible at periods of single manning for these protections to be offered.

- 5.4 The facilities for staff seem particularly sparse and again, there is no detail of how a single manned premises will allow the members of staff to be able to use toilet facilities, have a break or eat or drink. In addition it is difficult to see how a single member of staff can successfully view all of the premises (they are 78 feet/25 metres) and provide proper supervision.
- 5.5 It is difficult from the information that has been provided to see whether the layout, lighting and fitting out of the premises have been designed so as not to attract children and other vulnerable persons who might be harmed or exploited by gambling.
- 5.6 The applicant seeks to rely on a generic Cashino operating style and specific localised issues are not satisfactorily dealt with. The risk assessments have not been properly adjusted to reflect local conditions, particularly with the amount of vulnerable/homeless people on the streets in this area of town.
- 5.7 The applicant has recently had an application refused in Blackpool. This decision highlights that licensing authorities have a local discretion to grant or refuse applications for premises under the Gambling Act 2005. Your discretion to refuse is engaged in this application due to the inconsistencies and lack of clear information.
- 5.8 From the information provided by the applicant, the objectors invite the licensing sub-committee to refuse the application.

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