

**MIDDLESBROUGH COUNCIL
LICENSING SUB-COMMITTEE**

12TH JULY 2023

22 NEWPORT ROAD, MIDDLESBROUGH TS17 7BU

**SKELETON ARGUMENT ON BEHALF OF
DIRECTOR OF PUBLIC HEALTH
AND LICENSING AUTHORITY**

Introduction

1. There are two applications before the Sub-Committee.
2. The first is an application by Luxury Leisure to vary its Adult Gaming Centre licence by reducing the area of the premises.
3. This application has received a representation from the licensing authority (page A32).
4. The second is an application by Double Diamond to vary its premises licence at Teesside Leisure Park to a small area within 22 Newport Road, and to permit it to open for 24 hours rather than mid-day to 6 a.m.
5. This application has received representations from:
 - the licensing authority (page A34).
 - the Director of Public Health (page A37).
6. The responsible authorities have filed documents in support, in particular:
 - Independent expert report of Professor Heather Wardle (pages A 497 – A530).
 - Updated representation from Director of Public Health (page A424).
 - Central Ward, Index of Multiple Deprivation (page A428). (The Sub-Committee may be assisted by briefly reading the Executive Summary at pages A430-431).

- Map of gambling premises in locality (page A491). The Sub-Committee will particularly note that there are five gambling premises in the short stretch between the Bus Station and Dundas Mews.
 - Photographs of frontages of gambling premises, with prominent gambling offers (pages 478-490).
7. The main issue in this case concerns the proposed relocation of the casino licence from Teesside Leisure Park to 22 Newport Road. The responsible authorities' concerns, which are cumulative, are:
- (1) The introduction of a casino with the highest stake and prize machine gambling which can be provided in UK premises. The casino the 20 x Category B1 gaming machines will offer £5 stakes and £10,000 prizes¹ with a 2.5 second game cycle. The 20 x electronic roulette machines will offer a maximum stake of £100 and, presumably, a maximum prize of £3,500 (page A65 para 33). In comparison, the hardest gaming machines currently offered in the locality are in adult gaming centres and betting offices carry maximum stakes and prizes of £2 and £500 respectively.
 - (2) The fact that the entire gambling provision is by rapid play machines which are associated with high rates of problem gambling.
 - (3) The availability of alcohol on the premises, permitted in casinos but not in adult gaming centres or betting offices.
 - (4) The hard nature of the gambling environment, a function of the aim to fit a large number of roulette terminals and gaming machines in a single high street unit.
 - (5) The 24 hour nature of the premises: with still greater risk attaching to night-time gambling.
 - (6) Its co-location with a further 24 hour gambling premises, i.e. Luxury Leisure's Adult Gaming Centre, another exclusively machine-based gambling environment which is not permitted to have alcohol, but whose customers will be tempted if not

¹ £20,000 for linked progressive jackpots.

encouraged to cross over into the casino both by the higher stakes and prizes and alcohol available there.

- (7) The location of the unit on the high street, on a direct route from the bus station to the town centre, encouraging casual, ambient gambling, in distinction to the current location in the leisure park which acts as a destination.
 - (8) The concentration of gambling premises in the immediate locality. Within 135m of 22 Newport Road, there are no fewer than six existing hard gambling premises: Admiral next door; Regal (a large adult gaming centre 30 metres away); Merkur, a machine-led bingo premises, and three licensed betting offices next door to each other – Ladbrokes, William Hill and Paddy Power. Within the wider locality there are three Admiral adult gaming centres.
 - (9) The serious social and economic deprivation in the locality, which is associated with higher rates of gambling harms.
 - (10) The demographics of the local population, which include a high proportion of young persons and students, who are particular risk groups.
 - (11) The high crime in the locality.
 - (12) The designation of the locality as a cumulative impact area, as a result of high levels of alcohol-related crime and anti-social behaviour.
8. As a result, the responsible authorities' strong advice to the Sub-Committee is that the location of an electronic casino in this particular location would not be reasonably consistent with the gambling objective of protecting vulnerable people from being harmed or exploited by gambling.
 9. The responsible authorities' advice is supported by the independent expert report of Professor Heather Wardle, to which the Sub-Committee is respectfully referred.

The law

10. The Sub-Committee's discretion arises under section 153(1) of the Gambling Act 2005:

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)), and

(d) in accordance with the statement published by the authority under section 349 (subject to paragraphs (a) to (c)).

11. The Gambling Commission has the duty under section 25 of issuing guidance as to:

(a) the manner in which local authorities are to exercise their functions under this Act, and

(b) in particular, the principles to be applied by local authorities in exercising functions under this Act.

12. The Commission's guidance states that the Sub-Committee has no discretion to grant an application where that would mean taking a course which it did not think accorded with the licensing objectives (para 1.37 and 4.10).

13. In deciding whether the application to site a casino at 22 Newport Road accords with the licensing objectives:

(1) the Licensing Sub-Committee is concerned with the acceptability of the proposed casino in this particular location.

(2) the Sub-Committee's judgment is not one of hard fact. It is an evaluative judgment, based on its own assessment.

14. Both of these points were made clear by the Court of Appeal in the leading case of R (Hope and Glory) v City of Westminster Magistrates' Court²:

² [2011] EWCA Civ 31.

42. *Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.*

(Underlining added.)

15. Naturally, one cannot prove that Gambler A, B or C will be harmed by the location of a 24 hour, high stake and prize, gaming machine environment here. That is not required. All that is required is that the Sub-Committee's evaluative judgment is that the casino will not be reasonably consistent with the objective of preventing vulnerable people from being harmed or exploited by gambling.

16. As the Government has recently stated in the White Paper:

- *“Licensing authorities have a wide range of powers under the 2005 Act to refuse or place conditions on applications for gambling premises licences where there is cause for concern, and we fully support use of these powers” (page A494).*
- *“The government fully supports licensing authorities in their role as co-regulators of the 2005 Act and appreciates the local expertise that they have which guides their regulation of gambling in their communities” (page A495).*
- *“The government is also clear that the ‘aim to permit’ requirement in section 153 of the Act does not prevent the refusal of licences or the introduction of controls as necessary or desirable to minimise risk” (page A495).*

- *“As outlined above, the Gambling Act does provide licensing authorities with a wide range of powers to assess and set out the risks in their local areas as well as the ability to attach conditions to premises licences to manage these risks. The intent of the Gambling Act 2005 is to provide licensing authorities with the ability to manage local risks and make decisions using local knowledge.”* (Para 6.5).

17. If the Sub-Committee considers, based on the evidence, including independent expert evidence, the advice of its professional advisers and its own local knowledge, that this proposal in this place, is not consistent with the licensing objectives, then it can, and should, refuse the application.

Deficiencies

18. In respect of the proposed casino, the only application before the Sub-Committee is for the casino shown on the plan at page A41 made by Double Diamond.

19. The plan at page A41 shows a hatched box, with no detail given whatsoever. For example, no information is given regarding the location or layout of the gaming facilities, reception desk, WCs, seating, beverage service or back of house, frontage, fenestration, interior visibility etc.

20. Even the size of the box is unclear, with the legend stating 50.8 square metres, but the scale suggesting an area a quarter of that size.

21. This gives rise to a number of issues.

22. First, section 153(1) of the Act requires the Sub-Committee to consider compliance with the Gambling Commission’s Licence Conditions and Codes of Practice. The complete lack of information in the application makes it impossible for the Sub-Committee to do so.

23. Within the Licence Conditions and Codes of Practice, Social Responsibility Code 9.1.3 states:

1 Gaming machines may be made available for use in licensed casino premises only where there are also substantive facilities for non-remote casino games

and/or games of equal chance, provided in reliance on this licence, available in the premises.

2 Facilities for gambling must only be offered in a manner which provides for appropriate supervision of those facilities by staff at all times.

3 Licensees must ensure that the function along with the internal and/or external presentation of the premises are such that a customer can reasonably be expected to recognise that it is a premises licensed for the purposes of providing facilities for casino games and/or games of equal chance.

24. No information has been provided whether these provisions are complied with in respect of the hatched box shown at page A41.

25. Second, regulation 3 of the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007 makes it a mandatory condition on the premises licence that the layout of the premises shall be maintained in accordance with the plan. In this case, the plan does not show the layout of the premises, circumventing the objective of the regulations.

26. Third, Schedule 1 Part 1 paragraph 2 of the Regulations states that there must be a gap of at least 2 metres between any ordinary gaming table and any other equipment, apparatus or structure used by a person to gamble on the premises. The lack of any detail on the plan prevents any judgment being made regarding compliance with this regulation.

27. Fourth, Schedule 1 Part 1 paragraph 5 of the Regulations states that 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 table, gaming machine or betting machine in order to do so. The plan does not state whether there will be an ATM, or show whether its location meets the requirements of the Regulations.

28. Fifth, as stated above, the Commission's Guidance must be taken into account by the Sub-Committee, both under section 25 and section 153 of the Act. The Guidance regarding uncompleted developments is appended hereto. It makes clear that:

- (1) A licence should only be issued for premises which the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future (para 7.58).
- (2) The authority must consider whether, applying the principles in section 153, the premises ought to be permitted to be used for gambling (para 7.59).
- (3) Where the plan shows the proposed fit-out, it may be appropriate to issue the licence subject to a condition that trading in reliance on it shall not commence until the premises have been completed in all respects in accordance with the scale plans that accompanied the licence application (para 7.60).
- (4) If the plans are changed during fit out, then the applicant will be in breach of the licence (para 7.61).
- (5) The authority will need to be satisfied that the completed works comply with the plan (para 7.62).

29. The grant of a premises licence for a small, hatched box lacking any detail at all is in clear breach of the Commission's Guidance.

30. In addition to the deficiencies in the plan, the casino application is not by Luxury Leisure but by Double Diamond. However:

- (1) No information whatsoever has been presented regarding Double Diamond, e.g. regarding the company's status, its policies, training or anything else.
- (2) Its most recent accounts, to 29th August 2021, show trading losses of £4.5m, a balance sheet deficit of £6.3m and a deficit on its profit and loss account of £19.5m.³
- (3) In 2021, it paid £247,000 to the Gambling Commission in lieu of a financial penalty for ineffective implementation of safer gambling policies and

³ <https://find-and-update.company-information.service.gov.uk/company/06896085/filing-history/MzM1ODAzMDMwMWFkaXF6a2N4/document?format=pdf&download=0>

procedures and inadequate money laundering policies, including in a case relating to a student.⁴

31. The Sub-Committee has been provided with no information to answer any concerns regarding Double Diamond trading an ambient, high stake and prize hard gaming facility in central Middlesbrough.
32. The applicant has purported to sidestep all of the above requirements by stating that it has no intention of trading the proposed premises, and instead offers a condition that it won't trade the premises unless and until a further variation application is made.
33. However, this is an insufficient answer.

(1) It is not open to an applicant to avoid scrutiny of whether an application is compliant with the rules governing casino licences by offering a condition not to operate the casino for which they are seeking a licence. Section 153 makes it clear that in considering applications, the authority must consider consistency with the licence conditions and codes of practice, the guidance and the licensing objectives.

(2) Parliament did not create a technical exemption for converted casino licences being moved around boroughs, to enable them to move into inoperable premises of their choosing and without supplying the information required by the rules. Rather, it permitted operators to apply to move them, subject to the usual rules governing applications. In short, the usual rules apply.

(3) The Commission's Guidance sets out the purpose of conditions at paragraph 9.31:

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:

⁴ <https://www.gamblingcommission.gov.uk/public-register/regulatory-action/detail/129>

- a. relevant to the need to make the proposed building suitable as a gambling facility directly related to the premises (including the locality and any identified local risks) and the type of licence applied for*
- b. fairly and reasonably related to the scale and type of premises*
- c. reasonable in all other respects.*

I.e. according to the Guidance, conditions are to be applied to make the premises suitable for gambling. They are not to be applied to prevent the premises being used for gambling, far less to relieve the applicant of having to provide the information required by the rules.

(4) The Sub-Committee’s discretion to attach conditions to a premises licence must be exercised to further the policy and objectives of the Gambling Act 2005: Padfield v Minister of Agriculture, Fisheries and Food [1997] AC 997, 1030. It should not be exercised to save the applicant from having to demonstrate compliance with the Act, regulations and guidance.

(5) A licence with a condition preventing the use of the premises for the very activities granted by the licence is at best of doubtful legality: , see e.g. R v Inner London Crown Court ex parte Sitki [1993] COD 249.

34. The applicant may argue that other authorities have permitted licences to migrate to “post-box” sites. This does not make it lawful or proper. Further, in this case, the ultimate proposal is to migrate the licence and develop it at this particular site. Accordingly, the Sub-Committee should apply the rules governing such applications in the usual way.

35. The applicant may also seek to argue that the condition preventing opening is similar to a works condition. It isn’t. In the case of a works condition, the applicant properly sets out the proposals, which the Sub-Committee is then in a position to judge. The works condition simply states that the premises should not be operated until the approved works have been carried out. This is described by the Commission in paragraph 7.60 of its Guidance (attached). The condition suggested by the applicant is

not a works condition. It is a device which seeks to justify the absence of the detail normally required, and which is needed by the Sub-Committee in order to make a competent judgment.

36. Accordingly, on this independent ground, the application should be refused.

Luxury Leisure's case

37. Luxury Leisure stresses its processes to mitigate the risk that vulnerable people will be harmed or exploited by gambling. (See e.g. page A95 para 25.)

38. Leaving aside the fact that the applicant is not Luxury Leisure but Double Diamond, such processes are required of, and provided by, all casino operators.

39. Despite such processes, Professor Wardle explains that up to 27% of those playing electronic table games in a casino are likely to be problem or moderate risk gamblers (A503), and 38.7% of regular players of table games in casinos experience problem or moderate risk gambling while contributing 61.7% to gross revenues (see page A504). There is no figure specifically for category B1 gaming machines, as opposed to gaming machines in general including lower stake/prize machines in premises in general, but approximately one in eight machine players experiences problem or moderate risk gambling (page A503). The primary explanation for these figures rests with the gaming machines themselves: high speed of play, continuous play, high event frequency, random reward events (such as near-miss effects) and multiple visual and auditory stimuli (A 503), all of which will apply in the proposed electronic casino.

40. Professor Wardle demonstrates how harms are unequally distributed among communities, with deprived communities particularly at risk (page A504). Neither the applicant's evidence nor its local area risk assessment acknowledges this. Young adults are particularly at risk for problem gambling, with the odds ratio of attempting suicide nine times higher for young male problem gamblers than non-problem gamblers (page A503). This is particularly important given the large tertiary education facility nearby and the relative youth of the local population (page A502). Professor Wardle describes the applicant's lack of acknowledgment of higher risk of harms among this age group as a "major omission."

41. In summary, it is not in issue that Luxury Leisure will implement processes, e.g. to track player behaviour and spend and interact with those actually displaying signs of problem gambling, although it is concerning that the casino expects only to have 3 members of staff on duty, plus a bar server when the bar is open (page A148).
42. The issue, however, is not whether Luxury Leisure has processes which it is obliged to have by law in any event. The issue is whether the location of the casino at 22 Newport Road is reasonably consistent with the licensing objectives, having regard to the demographics and vulnerabilities of the local population and the nature and casual accessibility of the product to be offered. This remains largely unaddressed by Luxury Leisure.
43. A possible reason for this is that Luxury Leisure appears to be indifferent to the actual economic circumstances of Middlesbrough. This is reflected in its characterisation of a high spending customer as one who conducts a single transaction of over £10,000; any cumulative transactions in a single session of over £10,000, or any monthly cumulative transactions of over £50,000 (page A185). To put this into context, the mean average salary for residents of Middlesbrough is £32,000 per year.⁵
44. Luxury Leisure already operates three premises in central Middlesbrough, one a large premises directly adjacent to the proposed casino. As such, it could have presented evidence as to the average spend, range of spends, dwell time or regularity of visits of its customers, which would have provided useful evidence as to the behaviours of those customers, and the affordability of their behaviour in comparison to median income locally. Their evidence, however, is silent.
45. Luxury Leisure is also in a position to assist the Sub-Committee by producing its full incident logs in relation to those premises, together with data on customer interactions and self-exclusions. This would have helped to depict and quantify the adverse behaviours of its customers, and in particular whether they are associated with problem gambling or other economic, social or mental issues. However, again, Luxury Leisure

⁵ <https://www.varbes.com/economy/middlesbrough-economy> . In another part of the papers it is indicated that “an interaction” will take place when a customer has spent £500 (A197), equivalent to the median weekly salary of local residents, but this appears to be a warning of anti-money laundering measures rather than problem gambling interactions (see page A128 para 20), and in any case neither the application plan nor the indicative layout plan show any “quiet and discreet area for interactions by staff” suggested at page A183.

has elected not to produce this basic material.⁶ Therefore, it has not supported its assertion that its processes will be effective with readily available evidence as to whether they are effective.

46. Further, while mounting detailed critiques of the actions of various bodies including government, ministers and Middlesbrough Council, it has not thought it worth producing observation evidence as to the social issues in the area, which is a cumulative impact area because of a high degree of alcohol-related crime and disorder.

47. Therefore, even leaving aside the fact that the applicant is not Luxury Leisure but Double Diamond, the assertion that Luxury Leisure is a competent operator is of little or no assistance in determining these applications. All casino operators are expected to be competent. Their competence does not assist in resolving the issue, identified in Hope and Glory, whether they should be permitted to site this operation in this location among this local population.

Other matters

48. The Sub-Committee will be principally concerned with this particular proposal in this location.

49. Despite that, the applicant's evidence contains much information which is unlikely to be of significant or any weight in the Sub-Committee's deliberations, including:

(1) Parliamentary and Select Committee debates from 2003 – 2021.

(2) The question of whether wholly electronic casinos are unlawful. They are not unlawful.

(3) Whether wholly electronic casinos have been permitted elsewhere. They have, but this is not relevant.

(4) The fact that there is an existing casino licence in Middlesbrough, at Teesside Leisure Park. There is. The question is whether moving it to 22 Newport Road will be reasonably consistent with the licensing objectives. If the application is

⁶ Its local area risk assessment refers briefly to police call-outs (page A150), but this falls well short of a frank account of customer behaviour and other issues in its premises.

refused, the applicant will remain entitled to attempt to propose a better offer in a better location.

- (5) The Casino Advisory Panel's award to Middlesbrough of the right to grant a large casino under the Gambling Act 2005. Middlesbrough Council made a bid because the large casino process entitled it to demand the provision of additional benefits from the winner of the casino licensing competition. However, the casino project did not come to fruition, while other casino projects in Middlesbrough (including on a boat, in a leisure park, in a hotel, within an ongoing redevelopment scheme) have either failed or not been built, as the Sub-Committee knows. This reflects the lack of commercial demand for a casino locally. It may also explain why (despite its arguments to the contrary), Luxury Leisure wishes to promote casino trade by permitting or even encouraging its existing adult gaming centres customers to walk into the casino and spend money on higher stake and prize products, as demonstrated by the common street entrance it is proposing, the glazed screen between the two units, and the fact that it already describes its adult gaming centre as a "casino slots experience" (page A479). Notably, it also states that the casino and adult gaming centre will fit a similar customer profile (page A133 para 9). Its suggestion that its adult gaming centre customers may not cross over because they do not carry ID is most unconvincing. Whatever the reality, the fact that, 17 years ago, Middlesbrough bid for a 2005 Act casino is not relevant to whether this proposed casino is consistent with the licensing objectives.
- (6) Whether and if so why the casino licensing competition envisaged by the Gambling Act 2005 failed.
- (7) Whether Middlesbrough Council was well-advised by its officers in relation to its casino licensing competition.
- (8) Whether and if so why the Gambling Act 2005 failed in the way it defined small and large casinos.
- (9) Gambling policies from Brighton & Hove and Swansea.

- (10) Challenges by gambling industry consultants to official, peer-reviewed, data on gambling harms.
- (11) The question of whether public policy decisions regarding gambling should be determined by reference to the health and well-being of disordered participants, where this infringes on the liberty of the majority of players, who are not disordered. This is a political argument which has nothing to do with gambling premises licensing under the Gambling Act 2005. A key statutory objective of the Act is specifically to prevent vulnerable people from being harmed or exploited by gambling. The focus of the Act is expressly upon vulnerable people.
- (12) Whether gambling disorder is a separate phenomenon from problem gambling. The Act does not use either expression. It asks whether vulnerable persons risk being harmed or exploited by gambling. Harm may take many forms, including adverse impact upon their resources, relationship and health.
- (13) The question of whether gambling-related harms are caused by problem gambling or associated with it. While that topic is of interest to industry commentators, and pursued by them as their contribution to legislative and policy debates it is not relevant to the question in this case, which is whether the location of these premises, offering these products in this place risks harming or exploiting vulnerable people. For completeness, it should be added that, not only is this an inappropriate forum for this topic to be aired, it ignores very clear evidence, for example, that vulnerable people are harmed by gambling (which is why there is now a national problem gambling treatment service), that the national regulator is caused to intervene and impose sanctions when vulnerable people are permitted to gamble, and that problem gamblers are much more prone to suicide than non-problem gamblers.
- (14) Action by the Gambling Commission to shut down illegal online lotteries.
- (15) The expiry of the Middlesbrough gambling policy. This means that it is not available to guide the determination of this application (favourably or

unfavourably), but does not prevent the consideration of the application on its individual merits.

(16) The illustrative plan dated 30th June 2023 (page A84) showing the eventual proposal a) because there is no application before the Sub-Committee incorporating that plan and b) the plan is only indicative in any event. (It might be noted that the plan involves pushing the dividing wall back so enlarging the casino and diminishing the AGC.)

50. Among the many points raised are several grievances about how, and how strictly, gambling is regulated in the UK. Such points belong in the press, Parliament and public discourse. They are singularly inapposite for the determination of a premises licence application by a local Licensing Sub-Committee. Furthermore, they are apt to distract from the central issues in the case. The Sub-Committee is invited to make this clear at the hearing and in its decision.

Conditions

51. If, contrary to the above, the Sub-Committee decides to grant the casino variation, the Sub-Committee is asked to consider the following conditions:

- (1) At all times an SIA-badged security officer shall guard the principal entrance to the premises (see page A127 paragraph 17, A142 para 30);
- (2) In addition to the said security officer, there shall at all times be a minimum of three members of staff working at the premises of whom one shall hold a personal management licence and one shall hold a personal functional licence (page A148);
- (3) A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram (see page A128 para 17);
- (4) Prominent signage and notices advertising the Challenge 25 Policy will be displayed showing the operation of such policy.

- (5) No facilities for gaming shall be provided outside the hours of 0900 – 0000 (see Prof Wardle report page A506-7);
- (6) Members of staff shall track gaming by players in real time (see page A129 paragraph 19, A130 para 29);
- (7) No ATM shall be provided at the premises (the applicant is proposing an ATM which can cash out up to £1,000: page A197. This is strongly opposed. The median pre-tax income for Middlesbrough employees is £600 per week.⁷)
- (8) Safer gambling messages shall be displayed on all gaming machines and terminals (see page A130 para 29);
- (9) The maximum stake on electronic roulette terminals shall be £100 (page A131 para 33);
- (10) All staff working at the premises shall receive induction training including independent training on social responsibility, together with refresher training every six months thereafter. Record of such training shall be maintained and produced immediately on request to the licensing authority. (See page A139 para 14);
- (11) The venue shall install and maintain a comprehensive CCTV system at the premises which should cover, as a minimum:
 - a. all entry and exit points to and from the premises enabling frontal identification of every person entering under any light conditions;
 - b. the areas of the premises to which the public have access (excluding toilets);
and
 - c. gaming machines and the counter area;
- (12) The CCTV system shall continually record whilst the venue is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of thirty one days with date

⁷ <https://www.varbes.com/economy/middlesbrough-economy>

and time visible. Recordings shall be immediately arranged by a member of staff for handover to the Police or an authorised officer following their request.

- (13) A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to arrange for Police to view recent data or footage with the absolute minimum of delay when requested.
- (14) There shall be an external camera at the premises which will provide live images to staff in the service counter area.
- (15) Notices indicating that CCTV is in use at the premises shall be placed at or near the entrance to the premises and within the premises.
- (16) The licensee shall:
 - a. provide training on the CCTV system and how to access the footage if requested to do so by the police or authorised officer as part of the staff induction training programme or when the system is changed, and
 - b. periodically provide refresher training to all of its staff working at these premises on the CCTV viewing process.
 - c. ensure that participation in this training is formally recorded on each member of staff's training records which, if requested will be presented to the licensing authority immediately upon request.
- (17) The licensee shall ensure that the outside areas of the premises are monitored so as to ensure there is no public nuisance or obstruction of the highway.
- (18) An incident log shall be kept at the premises and made available on request to an authorised officer of the Licensing Authority or the Police. Details to include:
 - a. all crimes reported to the venue
 - b. all ejections of patrons
 - c. any complaints received concerning crime and disorder

- d. any incidents of disorder
 - e. all seizures of drugs or offensive weapons
 - f. any visit by a relevant authority or emergency service
 - g. any attempts by children and young persons to gain access to the premises to gamble
 - h. any Challenge 25 Refusals.
- (19) Third party testing on age restricted sales systems shall be carried out on the premises at least 3 times a year and the results shall be provided to the Licensing Authority immediately upon request.
- (20) The licensee shall not allow their logos or other promotional material to appear on any commercial merchandising which is designed for use by children.
- (21) The licensee will ensure, through regular checks and intervention that customer's children are not left unsupervised outside the premises.
- (22) A magnetic locking device, commonly referred to as a Maglock, will be installed and maintained on the main entrance/exit to the premises which will be operable by the ground floor staff.
- (23) If at any time (whether before or after the opening of the premises), the police or licensing authority supply to the premises names and/or photographs of individuals which it wishes to be banned from the premises, the licensee shall use all reasonable endeavours to implement the ban through staff training.
- (24) The licensee shall implement a policy of banning any customers who engage in crime, disorder or anti-social behaviour within or outside the premises.
- (25) The licensee will refuse entry to customers who appear to be under the influence of alcohol or drugs.
- (26) The licensee shall install and maintain an intruder alarm on the premises.

- (27) The licensee will ensure that customer toilets are checked hourly and access is permitted by interaction with staff members
- (28) All public signage/documentation relating to age restrictions, gambling advice and gambling support information (e.g. GamCare or similar support service) is displayed or provided on the premises in written English and any other language appropriate to the area and customer base.
- (29) Prominent GamCare documentation will be displayed at the premises.
- (30) Prominent signage indicating the permitted hours for the licensable activity shall be displayed so as to be visible before entering the premises.
- (31) The licensee shall not offer any enticement promotions, such as free spins, bonuses or happy hours during which gaming machines stakes are reduced.
- (32) The licensee shall train staff on specific issues related to the local area and shall conduct periodic refresher training. Participation in the training shall be formally recorded and the records produced to the police or licensing authority upon request.
- (33) The licensee will contact local treatment and support services to provide information on problem gambling support services and how their residents can self-exclude from Merkur Slots premises.
- (34) The licensee shall take all reasonable steps to prevent street drinking of alcohol directly outside the premises and to ban from the premises those who do so.
- (35) The licensee shall place a notice visible from the exterior of the premises stating that customers drinking alcohol outside the premises is not permitted and those who do so will be banned from the premises.
- (36) The licensee shall develop and agree a protocol with the police as to incident reporting, including the type and level of incident and mode of communication, so as to enable the police to monitor any issues arising at or in relation to the premises.
- (37) The licensee shall provide the Licensing Authority with their compliance/operating manual which sets out all of the premises policies to meet the regulatory requirements under the Gambling Act 2005 and shall provide a copy of

any update or revision as soon as practicable following the implementation of that change.

- (38) The casino shall not be advertised or promoted from within the adjoining adult gaming centre.

Conclusion

52. This application is to bring a premises involving exclusively rapid-play electronic machines offering the highest gaming stakes and prizes available in the UK to a high street in an area which is not only economically deprived but which also suffers from serious social issues, to site it immediately adjacent to an associated gaming premises, with a large number of other gambling premises nearby, and in such a way as to encourage ambient gambling. The Sub-Committee's professional officers advise strongly against granting the application. Their advice is in turn strongly supported by a leading, eminent independent expert on gambling prevalence and harms. The Sub-Committee is asked to accept the advice and refuse the application.
53. If, however, the Sub-Committee decides to grant the application, it is asked to impose the conditions set out above.
54. As for the application to diminish the size of the adult gaming centre, the only objection to this is that it is associated with the insertion of a casino. In and of itself, a diminution of the premises is unobjectionable. Whether the applicant wishes to pursue it in the event that the casino licence application is refused is another matter.

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Extract from Gambling Commission Guidance to Licensing Authorities

7.58. In determining applications, the licensing authority should not take into consideration matters that are not related to gambling and the licensing objectives. One example would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal. Licensing authorities should bear in mind that a premises licence, once it comes into effect, authorises premises to be used for gambling. Accordingly, a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use. Equally, licences should only be issued where they are expected to be used for the gambling activity named on the licence. This is why the Act allows a potential operator to apply for a provisional statement if construction of the premises is not yet complete, or they need alteration, or he does not yet have a right to occupy them. Part 11 of this guidance gives more information about provisional statements.

7.59. As the Court has held in a 2008 case (*The Queen (on the application of) Betting Shop Services Limited –v- Southend-on-Sea Borough Council* [2008] EWHC 105 (Admin)), operators can apply for a premises licence in respect of premises which have still to be constructed or altered, and licensing authorities are required to determine any such applications on their merits. Such cases should be considered in a two stage process; first, licensing authorities must decide whether, as a matter of substance after applying the principles in s.153 of the Act, the premises ought to be permitted to be used for gambling; second, in deciding whether or not to grant the application a licensing authority will need to consider if appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

7.60. For example, where the operator has still to undertake final fitting out of the premises but can give a reasonably accurate statement as to when the necessary works will be completed, it may be sufficient to simply issue the licence with a future effective date, as is possible under the Regulations (SI 2007/459: *The Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007* and SSI No 196: for Scotland). The application form allows the applicant to suggest a commencement date and the notice of grant allows the licensing authority to insert a date indicating when the premises licence comes into effect. In other cases, it may be appropriate to issue the licence subject to a condition that trading in reliance on it shall not commence until the premises have been completed in all respects in accordance with the scale plans that accompanied the licence application. If changes to the pre-grant plans are made, then parties who have made representations should be able to comment on the changes made. Part 9 of this guidance gives more information about licence conditions.

7.61. If the plans submitted at the time of the application for a premises licence are changed in any material respect during the fitting out of the premises after the grant of the licence, then the applicant will be in breach of the licence. If the applicant wishes to change the proposed plans after grant then, in order to avoid breaching the licence, it will be necessary for the

applicant to either make a fresh application under s.159 or seek an amendment to a detail of the licence under s.187 of the Act. If there are substantive changes to the plans then this may render the premises different to those for which the licence was granted. In such a case, variation of the licence under s.187 is not possible. For this reason, and while this is a matter of judgement for the licensing authority, the Commission considers it would be more appropriate in the case of any material post grant change, for the applicant to make a fresh application under s.159 to preserve the rights of interested parties and responsible authorities to make representations in respect of the application.

7.62. The local authority will need to be satisfied in any individual case that the completed works comply with the original, or changed, plan attached to the premises licence. Depending upon circumstances, this could be achieved either through physical inspection of the premises or written confirmation from the applicant or surveyor that the condition has been satisfied.

7.63. Requiring the building to be complete before trading commences would ensure that the authority could, if considered necessary, inspect it fully, as could other responsible authorities with inspection rights under Part 15 of the Act. Inspection will allow authorities to check that gambling facilities comply with all necessary legal requirements. For example, category C and D machines in a licensed family entertainment centre must be situated so that people under 18 do not have access to the category C machines. The physical location of higher stake gaming machines in premises to which children have access will be an important part of this, and inspection will allow the authority to check that the layout complies with the operator's proposals and the legal requirements.

7.64. If faced with an application in respect of uncompleted premises which it appears are not going to be ready to be used for gambling for a considerable period of time, a licensing authority ought to consider whether – applying the two stage approach advocated above – it should grant a licence or whether the circumstances are more appropriate to a provisional statement application. For example, the latter would be the case if there was significant potential for circumstances to change before the premises opens for business. In such cases, the provisional statement route would ensure that the limited rights of responsible authorities and interested parties to make representations about matters arising from such changes of circumstance are protected. Licensing authorities may choose to discuss with individual applicants which route is appropriate, to avoid them having to pay a fee for an application that the licensing authority did not think was grantable.

7.65. When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have to comply with the necessary planning or building consents. Nor should fire or health and safety risks be taken into account. Those matters should be dealt with under relevant planning control, building and other regulations, and must not form part of the consideration for the premises licence. S.210 of the Act prevents licensing authorities taking into account the likelihood of the proposal by

the applicant obtaining planning or building consent when considering a premises licence application. Equally, the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.