

REPORT OF THE BOROUGH SOLICITOR
Agenda item 13.3

At its meeting on 11 April 2006, the Council did not approve and adopt a recommendation from the Planning & Environment Committee to vary the hours of operation of Quicksilver Amusement Premises of 164-166 Cricklewood Broadway NW2 under the byelaws relating to Amusement Premises.

The London Borough of Barnet's Byelaws relating to Amusement Premises 1992 provide that amusement premises shall not be kept open between the hours of 10pm and 9am. It goes on to state that " The Council may, by resolution, vary these hours in specified cases or generally". The Council is defined in the Byelaws as the London Borough of Barnet and Article 4.02(j) of the Council's Constitution provides that only full Council will make, amend, revoke or adopt byelaws.

Quicksilver Amusement Premises of 164-166 Cricklewood Broadway NW2 were granted planning permission by the Head of Planning on 1 Sept 2005 to open between the hours of 9am and 12 midnight Monday to Saturday and from 9am to 10pm on Sunday. Quicksilver then approached the Council to regularise their gaming permit licence by applying for the same extension under the Council's byelaws. i.e the additional 2 hours Mondays to Saturdays from 10pm to 12 midnight and between 9am and 10pm on Sundays.

The Planning & Environment Committee's terms of reference include responsibility for gaming, entertainment, food and miscellaneous licensing insofar as not otherwise the responsibility of the Licensing Committee or Sub Committee. Therefore, QuickSilver Amusement Premises' request was reported to the Planning and Environment Committee on 29 March 2006, as the amusement premises comes under miscellaneous licensing and gaming and is not covered by the Licensing Committee.

The Planning and Environment Committee were asked to consider varying the Byelaws Relating to Amusement Premises to allow the amusements premises at Quicksilver to open between 9am and 12 midnight Monday to Saturday and between 9am to 10am on Sundays. Because specified hours were set out in the Byelaws and Quicksilver required a variation to these hours in relation to a specified case, in the report the Planning and Environment Committee were recommended to make a recommendation to Council.

On 29 March 2006 the Planning & Environment Committee resolved to recommend to Council that the hours of opening in the byelaws be varied to allow Quicksilver open for the hours they had sought. The Applicants did not make any representations at the Committee since there had been no objections to the application. Subsequently, at the Council meeting on 11 April 2006, the Council decided not approve and adopt the Report of the Planning and Environment Committee.

Solicitors acting on behalf of RAL Limited the owners of Quicksilver have recently written to the Council confirming that they have advised their clients to issue Judicial Review proceedings against the Council. The Solcitors have indicated that the

grounds for the proceedings are because they have been advised that at the Council meeting on 11 April, the Council took into account irrelevant considerations as regards the Byelaws in making their decision i.e the protection of the vulnerable from gambling and that if that consideration was legally relevant, the Council acted unfairly because the applicants were not given the opportunity to respond to the allegations before giving effect to it. They have supplied a copy of Leading Counsel's Opinion in support of their client's position.

Having considered this Opinion Counsel for the local authority has advised that he considers there is possible merit in Quicksilver's proposed Judicial Review application and it would be in the Council's interest to reconsider the decision.

Following this advice, it is proposed as follows

- 1) That the Council delegate the matter to the Planning & Environment Committee at their next meeting on the grounds that on the grounds that Council can agree to delegate a matter reserved to it under the Constitution or, alternatively, the application be considered as a consent under the Byelaws rather than a variation of the Byelaws (which is the probable case)
- 2) The Applicants be given the opportunity to speak at the Committee hearing so that they can deal with any concerns that Members of the Committee may have.

The next meeting of the Planning and Environment Committee is on 5 July, 2006.

RECOMMEND –

(1) That the Council delegate the consideration of QuickSilver's application to allow the amusements premises at Quicksilver to open between 9am and 12 midnight Monday to Saturday and between 9am to 10am on Sundays to the Planning and Environment Committee for consideration as a request for consent under the Byelaws relating to Amusement Premises 1992 at their next meeting on the grounds that the application be considered as a consent under the Byelaws rather than a variation of the Byelaws.

(2) The Applicants be given the opportunity to speak at the Committee hearing so that they can deal with any concerns that Members of the Committee may have.

(3) That the Borough Solicitor in conjunction with the Head of Planning and Environment Protection be instructed to take the appropriate action and advise QuickSilver accordingly

Jeff Lustig
Borough Solicitor