

## **Decisions of the Licensing Sub-Committee**

5 November 2020

### **Members Present: -**

Councillor Claire Farrier  
Councillor Alison Cornelius  
Councillor Lachhya Bahadur Gurung

#### **1. APPOINTMENT OF CHAIRMAN**

**RESOLVED** that Councillor Claire Farrier be appointed Chairman for this Licensing Sub-Committee meeting

#### **2. ABSENCE OF MEMBERS (IF ANY)**

None.

#### **3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON - PECUNIARY INTERESTS (IF ANY)**

None.

#### **4. LICENSING SUB-COMMITTEE HEARING PROCEDURE**

The Chairman explained the procedure that would be followed at the meeting.

#### **5. REPORT OF TRADING STANDARDS & LICENSING MANAGER - MERKUR CASHINO 48 BALLARDS LANE N3 2BX**

The Sub-Committee considered an application for a Bingo Premises Licence for Merkur Cashino, 48 Ballards Lane, Finchley N3 2BX.

#### **6. RISK ASSESSMENT**

The risk assessment was noted by the Sub-Committee.

#### **7. MOTION TO EXCLUDE THE PRESS AND PUBLIC**

**RESOLVED** that the parties be excluded from the meeting, together with the press and public, in accordance with the Gambling Act 2005.

Prior to exclusion, parties were notified that the decision of the Sub-Committee would be announced within 5 working days.

#### **8. DELIBERATION BY THE SUB-COMMITTEE IN PRIVATE SESSION**

The Sub-Committee deliberated in private session, accompanied by the Officer from HB Public Law and the Governance Officer.

**9. RE-ADMISSION OF THE PRESS AND PUBLIC: ANNOUNCEMENT OF THE DECISION OF THE SUB-COMMITTEE**

**PREMISES:** Merkur Cashino, 48 Ballards Lane, Finchley N3 2BX (the “Premises”)

**APPLICANT:** Cashino Gambling Limited

**ON 5 November 2020** following a remote hearing before the Licensing Sub Committee,

**The London Borough of Barnet**, as the Licensing Authority for the Premises  
**RESOLVED:**

The application for a Bingo Premises Licence for Merkur Cashino, 48 Ballards Lane, Finchley N3 2BX, as amended so that the opening hours of the Premises are 09:00hrs to 00:00hrs Monday to Sunday, is **GRANTED**.

**REASONS:**

1. This was a hearing to determine an application by Cashino Gambling Limited for a Bingo Premises Licence under the Gambling Act 2005 (the “Act”) for Merkur Cashino, 48 Ballards Lane, Finchley N3 2BX, (the “Premises”).
2. The Premises are not currently licensed and are located in a mixed commercial and residential area.
3. The Hearing was conducted remotely and all three members of the Sub-Committee were in attendance throughout the same, and during deliberations, to see and hear all the representations and to consider the application.
4. The application includes proposed conditions that have been seen and agreed by the Police. These include measures such as the use of CCTV, the implementation of a Challenge 25 scheme and signage for the same, appropriate staffing levels with no pre-planned single staffing at the Premises after 20:00hrs until closing and an incident log book. In addition to the published Agenda documents, the Sub-Committee also received a further bundle of documents from the Applicant that included various documents such as the Applicant’s local area risk assessments, witness statements, the Applicant’s operating procedures and excerpts from the Gambling Commission’s Guidance to Local Authorities (the “Applicant’s Bundle”). The Applicant also confirmed it was amending the application so that the opening hours sought were now 09:00 to 00:00 Monday to Sunday.
5. During the consultation process the Authority received 23 representations that are set out in full in Annex 3 to the Agenda documents. These raise a number of issues with the main concerns appearing to be the opening of a further gambling premises when there are already 4 other gambling premises in the area, concerns this would increase incidents of anti-social behaviour and criminal behaviour in the area, that having further gambling premises would make gambling more attractive to young and vulnerable people and concerns over children’s welfare generally. There were also concerns that granting this licence will cause more people to loiter in and around the Premises, which would make people feel unsafe as they walk past during late hours, as well as add to parking problems in the area. Issues were

also raised about the number and type of gaming machines in the Premises and various comments associated with a general or moral dislike of gambling and the effects this has on people, particularly vulnerable people, and their families.

6. The objectors generally did not accept that finishing at midnight was appropriate. It was understood that there were also issues with some of the objectors receiving copies of the Appellant's bundle, which was sent in three tranches due to its file size and may not have come through to the objectors' email account.
7. Representations were also made that allowing the Premises licence would encourage gambling and with Finchley being full of young families and with this road having a lot of public transport and children going down it, a lot of children are likely to pass by the Premises and be gradually drawn to gambling. It was stated that this area does have a particular concentration of children and young people and so was another argument for the Sub-Committee to consider their protection and that of vulnerable people in the area. It was also queried whether or not permitting a Premises licence for these bigger Premises would be in compliance with the Council's Finchley Town Centre Strategy.
8. Concerns were also raised about disruption caused by customers in terms of parking and it was also noted that there was a pub opposite the Premises that has two gaming machines and there was concern that this would attract further anti-social behaviour when people left the pub.
9. The Applicant was represented by Philip Kolvin QC, their Solicitor, Richard Bradley from Poppleston Allen and Amanda Kiernan, Andy Tipple and Steven Ambrose from Cashino Gaming Ltd. Mr Stuart Jenkins, an Independent Licensing Consultant was also in attendance. Five people who made representations were in attendance, including Caroline and Paul Walsh, Chris Wilson and Mrs Segal. Councillor Ross Houston, who is a Ward Councillor for this area, had submitted a representation on 15 August 2020 that had not been included in the Agenda documents, and was also in attendance and objected to the application.
10. In presenting the application the Applicant highlighted two particular matters. They referred to paragraph 7.56 of the Gambling Commission's Guidance to Local Authorities that states,

*"the Licencing Authority's primary obligation under s.153(1) [of the Act] is to permit the use of premises in so far as it thinks that to do so is:*

- a. *in accordance with any relevant code of practice issued by the Commission*
  - b. *in accordance with any relevant guidance issued by the Commission*
  - c. *reasonably consistent with the licensing objectives (subject to a and b above), and*
  - d. *in accordance with the licensing authority's statement of licensing policy (statement of policy) (subject to paragraphs a to c above)."*
11. Therefore, there is an expectation that licencing authorities will grant a gambling licence provided it complies with the relevant guidance, the licencing objectives and where there are any issues, that these cannot be addressed by way of further conditions on the licence.
  12. With respect to the "licensing objectives", these are set out in s.1 of the Act and are:

- (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.
13. Referring to page 120 of the Applicant's bundle, the Applicant also pointed out that paragraphs 5.31 and 5.34 of the Gambling Commissions Guidance to Local Authorities states that licencing authorities should not turn down applications for premises where relevant objections can be dealt with through the use of conditions and that consideration such as moral or ethical objections to gambling are not valid reasons to reject applications for premises licences.
14. In relation to issues such as need, the character of the area, traffic and parking, whilst these are valid issues for planning considerations, they are not relevant matters for the Licensing Sub-Committee to consider for a premises licence.
15. In relation to concerns over crime and disorder, paragraph 5.5 of the Gambling Commission's Guidance to Local Authorities states that, "*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.*"
16. Whilst there have been concerns raised about anti-social behaviour and loitering no real evidence of this has been submitted nor has any representation been submitted by the Police. In fact, the documents show the Police had no objections to the application and conditions as evidenced by the correspondence in Annex 2 of the Agenda papers. These conditions include measures including the use of CCTV, no pre-planned single staffing after 20:00hrs to closing, hourly checks of the toilets for alcohol and drug use, and the operation of the maglock mechanism at the main entrance. None of the other responsible authorities objected to the application.
17. The Sub-Committee has also seen and considered the Applicant's Local Area Risk Assessments and notes the Applicant's proposed measures to deal with local risks in light of the licensing objectives. The Assessments include information on local crime statistics and measures to be taken in respect of the same.
18. Regarding the protection of the young and vulnerable from being harmed or exploited by gambling, there is no definition of who is a "vulnerable person" but the guidance assumes this includes people who gamble more than they want to or beyond their means or may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance misuse of alcohol or drugs. A young person is defined as someone under the age of 18 years old, and the Applicant confirmed they will not be admitting under 18s in to the Premises and a challenge 25 proof of age scheme, with signage for the same, will be in operation. There are also no representations or concerns raised by the Local Safeguarding Children's Board, which is the body designated as competent to advise the Authority about the protection of children from harm. In addition, no alcohol is to be provided at the Premises and the Applicant is required to inspect the toilets every hour for signs of alcohol or drug

use and the Applicant's Local Area Risk Assessment refers to measures they take with respect to vulnerable people.

19. It was submitted by the Applicant that the law doesn't prevent gambling happening in the High Street where it is known that young people will often be present and so the fact that the Premises are located in the High Street or in an area where there are young people does not in itself raise any unusual issues. It was said that what the law does require, as reiterated in the Commission's Guidance as well as the Authority's Licensing Statement is that advertising should not be aimed at children or be particularly attractive to children and the Applicant says they comply with that code. It was stated that unlike other types of gambling premises, such as betting shops, where children are able to see inside from the road, the Premises would be arranged so that you cannot see directly in to the Premises and in that way they go beyond what is required by Parliament and by the Authority's own Statement. Therefore, the Applicant did not consider that arguments about the Premises being attractive to children were legally met. In relation to vulnerable people, as stated earlier the Sub-Committee has considered the documents in the Applicant's further bundle that includes a local area risk assessment and measures to help vulnerable people.
20. Complaints were made about the number of gambling premises in the area and it was highlighted that Barnet's Statement of Gambling Principles did not say that area could not have any more gambling premises and it was argued that in any event there was no overprovision of bingo premises. Matters concerning the vision for Finchley and town planning in general were matters for planning but the Applicant noted that Finchley did not appear to have a Betwatch scheme in operation and offered to lead on setting one up for the area, liaising with the relevant authorities and other gambling premises in order to do so. This was appreciated by the Sub-Committee who took up the Applicant on that offer and hoped they would be in touch with the Licensing Authority's officers in relation to the same in the very near future.
21. Concerns were raised about the number and type of gaming machines shown in the Plan attached to the application, to which the Applicant stated that they were only seeking to install what they were allowed to under the Act and permitted by the Gambling Commission. If they were wrong about that then the Licencing Authority and/or the Gambling Commission could investigate and take action.
22. In response to questions about proposed staffing levels at the Premises, the Applicant explained that they always had an experienced staff member on the Premises and there would be times when the number of staff needed may switch between one and two. Staffing levels were considered by management taking into account how many customers came in at particular times and that data was reviewed every so often to review staffing needs during the day. The proposed conditions stated there was to be no pre-planned single staffing from 20:00hrs until closing and the Applicant had a staff rota to ensure there was always two staff members after 20:00hrs. Should there be one staff member after 20:00hrs for whatever reason a maglock system would be in place at the entrance in accordance with the proposed conditions.
23. Regarding concerns about disruption, it was reiterated that the applicant generally did not have any problems with disorder or problems up to midnight and as for

parking, in their experience most of their customers tend to walk up rather than drive.

24. Moving to the report by Mr Stuart Jenkins, Independent Licensing Consultant of Leveche Associates, the premises he visited all closed by 22:00hrs but the application was seeking for the Premises to be open until midnight. Mr Jenkins confirmed that the other premises were currently closing at 22:00hrs due to the current Covid-19 regulations. In considering his report, the Sub-Committee also noted his inspections were carried out between Sunday 25<sup>th</sup> October and Thursday 29<sup>th</sup> October and so they did not cover Friday and Saturday, which were usually the busier days for most High Street shops. Furthermore, as his inspection occurred whilst Covid-19 restrictions were in place and most places were required to close by 22:00hrs, it was likely that fewer people than usual were out and therefore the Sub-Committee did not know how busy those various premises were on Fridays and Saturdays generally or if there were any anti-social behaviour issues in the hours up to midnight during more normal times.
25. The sub-committee gave full consideration to all the objectors' concerns. However, they considered that granting this application with the amended opening hours of 09:00hrs to 00:00hrs Monday to Sunday was not contrary to the objectives set out in s.153(1) of the Act or the licensing objectives in general. Therefore, the Sub-Committee decided to grant the Bingo Premises Licence with the amended hours.

### **Right to Appeal**

26. If the applicant or a person who made representations in relation to this application is aggrieved with the decision of the Licensing Panel, they may appeal to the Magistrates' Court within 21 days beginning with the day on which they receive notification of this decision.