

Item No. 6	Classification: Open	Date: 10 <sup>th</sup> November 2008	Meeting Name: Licensing Sub- Committee
Report title:		<b>GAMBLING ACT 2005 – APPLICATION FOR A PREMISES LICENCE IN RESPECT OF AN ADULT GAMING CENTRE AT 43 BOROUGH HIGH STREET, LONDON, SE1 1LZ</b>	
Ward(s) or groups affected:		<b>CATHERDRALS</b>	
From:		<b>Strategic Director of Environment &amp; Housing</b>	

## RECOMMENDATION

1. That the Committee consider whether to grant the application by Frankice (Golders Green) Ltd for a Premises Licence in respect of Adult Gaming Centre at 43 Borough High Street, London, SE1.
2. **Note:** The application is opposed by a local business.

## BACKGROUND INFORMATION

3. The Gambling Act 2005 came into effect on 1 September 2007. It introduced a new licensing regime for betting and gaming under the joint responsibility of the newly established gambling commission and the local licensing authority.
4. Under the Act, the gambling commission has primary responsibility for issuing operators licences and personal licences while the local authority has primary responsibility for issuing premises licences. Gaming and betting establishments are normally required to obtain all three types of licence before they are able to operate lawfully. no premises licence may be issued without an operating licence having been obtained from the commission.
5. In considering applications made to it under the Act this authority is required to have regard to
  - The Gambling Act 2005 and the secondary regulations issued under the Act;
  - The licensing objectives set out in the Act (see paragraph 6 below);
  - The Guidance given to licensing authorities by the gambling commission;
  - The authority's own statement of gambling licensing policy
6. The three licensing objectives set out under the Act are
  - Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
  - Ensuring that gambling is conducted in a fair and open way; and
  - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
7. The local licensing authorities primary concern under the Act will be with the third objective of protecting children and other vulnerable people.

8. Section 153 of the Act provides that in exercising its function under part 8 of the Act (which deals with premises licensing and provisional statements) a licensing authority should aim to permit the use of premises for gambling in so far as it thinks it
  - In accordance with any relevant code of practice under section 24 of the Act;
  - In accordance with any relevant guidance issued by the commission under section 25 of the Act;
  - Reasonably consistent with the licensing objectives (subject to the above); and
  - In accordance with the statement of policy published by the authority under section 349.

## **KEY ISSUES FOR CONSIDERATION**

### **The Application**

9. On 26<sup>th</sup> August 2008 an application for a grant of a Premises Licence was made to this Council on behalf of Frankice (Golders Green) Limited in respect of the premises situated at 43 Borough High Street, London SE1. The application seeks a Premises Licence in regard of an adult gaming centre. A copy of the application is attached to this report as Appendix A. The application includes a plan of the premises in 1:100 scale, which will be presented at the hearing as Appendix B.
10. Consultation on the application has been undertaken in accordance with the Act and relevant regulations. Notification of the application has been given by the applicant to the relevant responsible authorities and the application has been advertised by way of a poster displayed at the premises and in a local newspaper.

### **The Representations**

#### **Responsible Authorities**

11. No representations have been received from responsible authorities.

#### **Interested Parties**

12. A representation has been received in respect of this application by an interested party. The representation is made by a local business, BGW McDaniel. The representation is attached as Appendix C.
13. The representation relates to the licensing objectives concerning preventing gambling from being a source of crime or disorder, being associated with crime and disorder or being used to support crime; and protecting children and other vulnerable persons from being harmed or exploited by gambling.

### **The Conciliation Process**

14. The interested party was contacted to participate in conciliation, however it was decided that the matter would be referred straight to the Licensing Sub- Committee for

determination.

### **Mandatory Licence Conditions**

15. The Committee should be aware that in event that a premises licence may be granted in respect of this application the following mandatory conditions applicable to all categories of premises must be attached to that licence.

- (1) The conditions specified in paragraphs (2), (3) and (4) shall be attached to every premises licence;
- (2) The summary of the terms and conditions of the premises licence issued under section 164(1)(c) of the Act shall be displayed in a prominent place within the premises;
- (3) The layout of the premises shall be maintained in accordance with the plan;
- (4) The premises shall not be used for –
  - (a) The sale of tickets in a private lottery; and
  - (b) The sale of tickets in any other lottery in respect of which the sale of tickets on the premises is otherwise prohibited
- (5) In this regulation –
  - (a) A “private lottery” means a private society lottery or a work lottery within the meaning of paragraphs 10 and 11 of Schedule 11 to the Act; and
  - (b) A “customer lottery” has the same meaning as in Part 3 of schedule 11 to the 2005 Act.

16. Additionally, the following mandatory conditions applicable to adult gaming centre premises licences will be applied:

- (1) A notice stating that no person under the age of 18 years is permitted to enter the premises shall be displayed in a prominent place at every entrance to the premises;
- (2) No customer shall be able to access the premises directly from any other premises in respect of which a licence has been issued under Part 8 of the Act, or a permit issued under Schedule 10, 12 or 13 to the Act, has effect;
- (3) 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 machine in order to do so;
- (4) (a) No alcohol shall be permitted to be consumed on the premises at any time during which facilities for gambling are being provided on the premises;
- (4) (b) A notice stating the condition in sub-paragraph (a) shall be displayed in a prominent place at every entrance to the premises

### **Default Licence conditions**

17. There are no default conditions for Adult Gaming Centres.

## **Compliance with conditions**

18. The premises in question are not yet operating. Accordingly the applicant company has been asked to confirm that it will be able to comply with each of the mandatory and default conditions listed in paragraphs 16 to 18 above.

## **The Gambling Commission's code of practice for gambling operators**

19. Under Section 24 of the Act the Commission is empowered to make Codes of Practice about the manner in which facilities for gambling are provided. One of these codes - The Code of Practice for Gambling Operators – contains requirements with which all operators must comply through conditions attached to the operating licence.
20. Relevant to this Committee's considerations are the social responsibility provisions of the operators licence.
21. In dealing with combating problem gambling operators licences require that
- (1) Licensees must have and put into effect policies and procedures intended to promote socially responsible gambling
  - (2) Licensees' policies and procedures for socially responsible gambling must include but not be confined to
    - The specific policies and procedures required by the following provisions of section 2 of this code;
    - A commitment to and how they will contribute to research into the prevention into treatment of problem gambling;
    - A commitment to and how they will contribute to public education on the risks of gambling and how to gamble safely; and
    - A commitment to and how they will contribute to the identification of and treatment of problem gamblers.
22. In dealing with the protection of children, gambling operators licences require that
- (1) Licensees must have and put into effect policies and procedures designed to prevent underage gambling, and monitor the effectiveness of these;
  - (2) This must include procedures for:
    - Checking the age of apparently underage customers;
    - Removing from adult only licensed premises anyone who appears to be underage who tries to access the gambling facilities and cannot produce an acceptable form of identification;
    - Taking action when there are attempts by under 18s to enter adult only premises;
    - Refusing entry to any adult only area of a track to anyone unable to produce an acceptable form of identification; and

- Taking action when there are unlawful attempts to enter the adult only areas.

(3) Licensees must not deliberately provide facilities for gambling in such a way as to appeal particularly to children or young people, for example by reflecting or being associated with youth culture;

(4) In premises restricted to adults, service should be refused in any circumstances where any adult is accompanied by a child or young person;

(5) Licensees must take all reasonable steps to ensure that all staff understand their responsibilities for preventing under-age gambling. This should include appropriate training which must cover the legal requirements on returning stakes and not paying prizes to underage customers;

(6) Licensees must only accept identification which:

- Contains a photograph from which the individual can be identified;
- States the individual's date of birth;
- Is valid; and
- Is legible and has no visible signs of tampering or reproduction.

**The Southwark Statement of Gambling Licensing Policy and the licensing objective of the protection of children and vulnerable persons from harm or exploitation by gambling.**

23. The representations received in respect of this application relate to the licensing objectives of *preventing gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime, and the protection of children and vulnerable persons from harm or from being exploited by gambling*. Section 122 of this authority's statement of licensing policy sets out that the authority will wish to consider the steps taken by the applicant to comply with the social responsibility requirements of the operating licence, in determining the application.

**The Southwark Statement of Gambling Licensing Policy and location.**

24. Sections 91 to 93 of the authority's statement of policy deals with the matter of location. It states

“(91). As per the Gambling Commission's Guidance for local authorities, 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;

(92). In pursuit of these objectives, when determining applications for premises licences, this authority will have regard to the location of the premises. The authority will give special consideration in relation to the proximity of premises to

- Local schools, youth clubs, shops, parks, leisure and recreational establishments and any other similar premises directed at, or primarily used by children or families

- Places where vulnerable people are housed or treated, including clinics, recovery centres, outpatients clinics and homes
- Residential areas where there is a high concentration of children and young people or vulnerable people
- Areas where there is a high level of organised crime
- Places of worship, community facilities or public buildings
- Areas where there is considered to be an over-concentration of similar existing licensed operations

(93). This list is not exhaustive and, as stated, each case will be considered upon its own merits. If an applicant can show how they can overcome licensing objective concerns this must be taken into account.”

25. The premises located at 43 Borough High Street are set in a mixed commercial and residential area. A copy of a map of the local vicinity is attached as Appendix D.

### **Premises History**

26. On 17<sup>th</sup> June 2008 applications were received to split the premises into 2 Adult Gaming Centres. Due to two representations from local businesses and a representation from Southwark Council's Licensing Service, the applications were withdrawn and replaced with this current application on 26<sup>th</sup> August 2008.
27. All interested parties who made representations to the applications received on 17<sup>th</sup> June 2008 were written to and advised of the withdrawal of those applications and the subsequent submission of the current application. They were asked to resubmit their representations for the new application.

### **Local Vicinity**

28. A map of the local vicinity is attached as Appendix D. The premises is located at the centre of the circle, marked by a triangle. Listed below are premises that are currently operating in the local vicinity (but outside the circle) as gambling premises and have applied for conversion of current licences under the Gambling Act 2005
- **Coral**, 97/99 Borough High Street, London SE1 (just outside circle)
  - **Agora**, 92/94 Borough High Street, London SE1 (just southwest off map)

### **Community Impact Statement**

29. The issues raised by the representation is that the addition of the Adult Gaming Centre on Borough High Street will have effects upon the local community in terms of the protection of children and other vulnerable persons from being harmed or exploited by gambling licensing objective, and could increase crime and disorder in the area.
30. The Committee will be aware that under the laws of natural justice each application is required to be considered upon its own merits with all relevant matters taken into account.
31. In doing so the Committee will wish to address the specific steps proposed to be taken by the applicant company to address this issue.

## **Resource Implications**

32. Upon application to the Council the applicant company paid a fee of £1,917.00 This fee contributes toward the processing and determination of the licence application and subsequent inspection and enforcement issues. There are no other resource implications contained within this report.

## **Consultation**

33. Consultation undertaken in connection with this report is set out in paragraph 10.

## **CONCURRENT REPORT BY THE STRATEGIC DIRECTOR OF LEGAL & DEMOCRATIC SERVICES – LEGAL ISSUES**

34. The Sub-Committee is asked to determine the application for a premises licence under Section 159 of the Gambling Act 2005.

35. Section 163 of the Act states that a licensing authority shall either grant or reject the premises licence application.

36. The principles which Sub-Committee members must apply when determining applications are contained in section 153 of the Act as set out below:

”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; and
- (d)- in accordance with the statement of licensing policy, subject to paragraphs (a)-(c)”

37. Section 153 (2) of the Act states that a licensing authority may not have regard to the demand for the facility which is proposed to be provided.

38. Section 210 of the Act states that a licensing authority shall not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning or building.

## **Hearing Procedures**

39. Subject to the Proceedings of Licensing Committees and Sub-committees Premises Licences and Provisional Statements Regulations, the Licensing Sub-Committee may determine its own procedures.

40. Hearings will take the form of a discussion led by the Sub-committee. Cross examination will not generally be permitted.

41. The hearing must take place in public; however, the Sub-committee may direct that part, or all of a hearing shall be in private if it is satisfied that it is necessary to do so. When making such a decision, the Sub-committee must have regard to-
  - a) any unfairness to a party that is likely to result from a hearing in public; and
  - b) the need to protect as far as possible, the commercial or other legitimate interests of a party.

42. The Sub-committee must ensure that each party is given the opportunity to-
  - a) address the committee on all relevant matters;
  - b) call witness to give evidence on all relevant matters;
  - c) provide further information on any matter on which clarification has been sought by the Sub- committee.
43. The Sub-committee must permit any party to question any other party on any matter that is relevant to the application, or representations made, where the sub-committee considers that in all the circumstances it is appropriate to do so.
44. The Sub-committee must consider documentary evidence produced by a party either before the hearing, or at the hearing with the consent of all the other parties attending the hearing.

### **The role of the licensing Sub-committee**

45. Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Gambling Law, the Commission's Guidance and the Council's Statement of Gambling Licensing Policy.
46. As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.
47. Members will be aware of the Council's Code of Conduct which requires them to declare personal and prejudicial interests. The Code applies to Members when considering gambling applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.
48. The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must -
  - a) live sufficiently close to the premises to be affected by the authorised activities; or
  - b) have business interests that might be affected by the authorised activities; or
  - c) represents persons in either of these two groups.

Interested parties can be persons who are democratically elected such as councillors and MPs.

49. Under the Human Rights Act 1998. the Sub Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision.

### **Appeals**



50. Interested Parties, Responsible Authorities and the applicant have the right to appeal the decision of the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

Background Papers	Held At	Contact
The Gambling Act 2005 plus relevant secondary regulations	Southwark Community Safety Enforcement Business Unit, The Health Safety & Licensing Unit, C/O The Chaplin centre, Thurlow Street, London, SE17 2DG As above	Kirty Read 020 7525 5748
The Gambling Commission's Guidance on the Act plus relevant codes of practice		
The Southwark Statement of Gambling Licensing Policy		
Various papers from the file Agora/43 Borough High St		

#### APPENDICES

No.	Title
Appendix A	Copy of the application
Appendix B	Copy of the plan of the premises (to be presented at hearing)
Appendix C	Copies of the representations received to the application
Appendix D	Copy of the local area map

#### AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Kristie Ashenden, Principal Licensing Officer	
Version	Final	
Dated	29 October 2008	
Key Decision?	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
Officer Title	Comments Sought	Comments included
Strategic Director for Legal and Democratic Services	Yes	Yes
Finance Director	No	No
Executive Member	No	No
Date final report sent to Constitutional/Community Council/Scrutiny Team	29 October 2008	