

Item No. 5	Classification: Open	Date: 5 January 2009	Meeting Name: Licensing Sub- Committee
Report title:		GAMBLING ACT 2005 – APPLICATION FOR A PREMISES LICENCE IN RESPECT OF A BETTING SHOP UNIT 1 353/355 WALWORTH ROAD, SE17 2AL	
Ward(s) or groups affected:		FARADAY	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the Committee consider whether to grant the application by Frankice (Golders Green) Ltd for a Premises Licence in respect of a non track betting at 353/355 Walworth Road, SE17.
2. **Before considering representations with regard to the licensing objections the Licensing Sub-Committee is asked to consider section 152(1)(b) of the Gambling Act 2005 and if the premises are two totally and legally separate premises or a single premises subdivided into two.**
3. **Note:** The application is opposed by William Hill Organization Ltd, Betfred Spectrum, 3 Local Ward Councillors, a local resident and the Licensing Authority.

BACKGROUND INFORMATION

4. 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.
5. 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.
6. 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
7. 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.
8. The local licensing authorities primary concern under the Act will be with the third objective of protecting children and other vulnerable people.
9. 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

10. On 5 June 2008 an application for a grant of a Premises Licence was made to this Council on behalf of Frankice (Golders Green) Limited t/a as Agora Amusement and in respect of the ground floor of the premises situated at Unit 1, 353/355 Walworth Road, SE17. The application seeks a premises Licence in regard of a non-track betting premises. A copy of the application is attached to this report as Appendix 1. The application includes a plan of the premises in 1:100 scale, which is reproduced as Appendix 2.
11. 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

12. The licensing authority has submitted one representation as a responsible authority with regard to the application under the Gambling Act 2005.
13. The representation is made with regard to the licensing objective protecting children and other vulnerable persons from being harmed or exploited by gambling.
14. The representation says that the effect of granting these licences would produce areas where there is an over-concentration of similar licensed operations. The representation

is attached to the report as appendix 3. Further information received supporting the representation is also attached as appendix 3A.

Interested parties

15. Representations have been received in respect of this application by interested parties. The representations are made by William Hill Organization Ltd, Betfred Spectrum, 3 Local Ward Councillors and a local resident .
16. The representations make similar arguments, that the area is already well served by betting and gaming establishments, and that the grant of a further licence may lead to an over-proliferation of such in the area with consequent impact on children and vulnerable people.
17. The Committee will understand that demand is not a matter to be taken into account under this Act but that the potential impacts upon the licensing objectives are. The representations are reproduced at Appendix 4.

The conciliation process

18. No attempt at conciliation has been made in this case given the nature of the representations. The matter is referred straight to the Licensing Sub- Committee for determination.

Operating history of the premises

19. The premises formed part of the Adult Gaming Centre (AGC) situated at the same site (353/355 Walworth Road). These premises held Gaming Machine permits held by Mr. Amarjit Singh Mann on behalf of Ablethird Ltd under the previous Gaming Act 1968.
20. On the 18th of May 2007 Mr. Amarjit Singh Mann on behalf of Ablethird Ltd, applied for a further AWP gaming machine permit under the Gaming Act 1968 in respect of 353 / 355 Walworth Road, London, SE17 1RL to allow an unlimited number of AWP machines at that address.
21. A covering letter provided with the application indicated that the premises known as 353 / 355 Walworth Road, London, SE17 1RL was due to be split into two units to provide two gaming arcades. The covering letter proposed that the existing AWP permit would pertain to one of the arcades, and that the new application for a permit would apply to the second arcade.

The application was subsequently withdrawn so no permit was granted in relation to it.

22. On 6th of August 2007 Mr. Amarjit Singh Mann on behalf of Frankice (Golders Green) Ltd, applied to convert the AWP permit granted in respect of 353 / 355 Walworth Road, London, SE17 1RL into a Premises Licence for an Adult Gaming Centre (AGC) under the Gambling Act 2005.
23. Consequent to the application, a Premises Licence for an AGC was duly granted on 1st of September 2007 in respect of the premises. A copy of the Premises Licence for an AGC issued in respect of the application is attached as appendix 5.
 - o The existing plan will be distributed at the hearing.

24. (**N.B.** On the 27th of November 2007 The Licensing Unit was informed that Frankice (Golders Green) Ltd and Ablethird Ltd were both part of the same company (Agora) and that in respect of the conversion application any Premises Licence subsequently granted should be in the name of Frankice (Golders Green) Ltd.)
25. On the 5th of June 2008 Frankice (Golders Green) Ltd simultaneously applied to vary the Premises Licence for an Adult Gaming Centre issued in respect of (unit 2) 353 / 355 Walworth Road, London, SE17 . The nature of the variation was to reduce the extent of the premises (as per plans provided with the application).
26. (***N.B.** Although the applicant refers to the premises as 'unit 2' on the variation application, as the Premises Licence to which the variation application relates was issued in regards to a single premises (353 / 355 Walworth Road, London, SE17 1RL), the variation application was only be considered in respect of a single premises).
27. The application to reduce the extent of the Unit 2, 353/355 Walworth Road as per paragraph 24 above did not receive any representations. The licence is ready to be issued, however, at the request of the applicant company the issuing of the licence is being withheld until the application for Unit 1 (non track betting) has been determined.

Current operation of the premises

28. During a recent visit made to the premises it was observed that the premises had already been split into two by a dividing wall and could only be accessed by separate entrances. The area which is 353 is now the AGC and is in operation and the area which is 355 is an empty shell. The current images of premises are attached as appendix 6.
29. (***N.B.** The Current Premises Licence to which relates to this premises had been issued in regards to a single premises (353 / 355 Walworth Road, London, SE17 1RL).

Local Vicinity

30. A map of the local vicinity is attached as Appendix 7. Listed below are premises that are currently operating in the local vicinity within a 100m radius as gambling premises under the Gambling Act 2005.
- **Coral**, 7-11 Camberwell Road, London SE5
 - **Agora Amusement**, 31 Camberwell Road, London SE5
 - **William Hill**, 386-388 Walworth Road, SE17
 - **Betfred**, 361-363 Walworth Road, SE17
 - **Quick Silver**, 312 Walworth Road, SE17

Mandatory licence conditions

31. 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.
32. Additionally, the following mandatory conditions applicable to betting premises licences (other than tracks) 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)(1) Access to the premises shall be from a street or from other premises with a betting premises licence;
 - (2)(2) Without prejudice to sub-paragraph (1), there shall be no means of direct access between the premises and other premises used for the retail sale of merchandise or services;
 - (3) Subject to anything permitted by virtue of the 2005 Act, or done in accordance with paragraphs 4, 5, 6 and 7 below, the premises shall not be used for any purpose other than for providing facilities for betting;
 - (4) 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 leave any gaming machine or betting machine in order to do so;
 - (5) No apparatus for making information or other material available in the form of sounds or visual images may be used on the premises, except for apparatus used for the following purposes –
 - (a) Communicating information about, or coverage of, sporting events, including –
 - (i) Information relating to betting on such an event; and
 - (ii) Any other matter or information, including an advertisement, which is incidental to such an event
 - (6) No publications, other than racing periodicals or specialist betting publications, may be sold or offered for sale on the premises;

(7) No music, dancing or other entertainment shall be provided or permitted on the premises, save for entertainment provided in accordance with paragraph 5;

(8)(1) 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;

(8)(2) A notice stating the condition in sub-paragraph (1) shall be displayed in a prominent place at every entrance to the premises; and

(8) A notice setting out the terms on which customers are invited to bet on the premises shall be displayed in a prominent place on the premises to which customers have unrestricted access.

Default licence conditions

33. The Committee should also be aware that in the event that any premises licence is issued in respect of this application the following default condition should also be added to that licence

(1) No facilities for gambling shall be provided on the premises between the hours of 10pm on one day and 7am on the next.

Compliance with conditions

34. The premises in question are not yet operable. 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

35. 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.

36. Relevant to this Committee's considerations are the social responsibility provisions of the operators licence.

37. 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.

38. 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.

39. The representations received in respect of this application relate to the third licensing objective of the protection of children and vulnerable persons from harm or from being exploited by gambling. Section 122 of this authorities 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 Switham statement of gambling licensing policy and location.

40. 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.”

41. The premises located at 361 / 363 Walworth Road are set in a mixed commercial and residential area. A copy of a map of the local vicinity is attached as Appendix 5.

Community Impact Statement

42. The contention raised by the representations is that the addition of this one further betting shop in the Walworth area will impact upon existing established betting and gaming facilities and 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.

43. 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.

44. 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

45. Upon application to the Council the applicant company paid a fee of £2,280.00 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

46. 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

47. The Sub-Committee is asked to determine the application for a provisional statement under Section 204 of the Gambling Act 2005.

48. 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)”

49. 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.

50. 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

51. 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.

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

53. 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.

54. 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.
55. 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.
56. 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

57. 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.
58. 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.
59. 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.
60. 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.
61. 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

62. 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	Mrs 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 HSL/Betfred/355 Walworth Rd		

APPENDICES

No.	Title
Appendix 1	Copy of the application
Appendix 2	Copy of the plan of the premises
Appendix 3	Copies of the representations received to the application
Appendix 4	Copy of the local area map

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	22 December 2008	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
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	22 December 2008	