

Item No. 5	Classification: Open	Date: June 17 2009	Meeting Name: Licensing Sub- Committee
Report title:		GAMBLING ACT 2005 – APPLICATION FOR A VARIATION OF PREMISES LICENCE IN RESPECT OF AGC 1, 92 – 94 BOROUGH HIGH STREET, LONDON SE1 1LJ & APPLICATION FOR A PREMISES LICENCE IN RESPECT OF AGC 2, AGC 3 & AGC 4, 92 – 94 BOROUGH HIGH STREET, LONDON SE1 1LJ	
Ward(s) or groups affected:		CATHEDRALS	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the Committee consider whether to grant the applications by Frankice (Golders Green) Ltd for a variation of the Premises Licence in respect of a Adult Gaming Centre (AGC 1) and also to consider applications for a new grant of Premises Licence in respect of 3 Adult Gaming Centres (AGC 2, AGC 3 and AGC 4) at the same address.
2. **Note:** The first application is requesting a reduction in size of the extent of the existing Licence. The second, third and fourth applications are seeking grants of Premises Licence due to the premises being divided to create separations to set up additional AGC (2), AGC (3) and AGC (4). Each application needs to be dealt with separately.
3. **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 four totally and legally separate premises or a single premises subdivided into four.**

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 27 February 2009, 4 applications were simultaneously made to the Council on behalf of Frankice (Golders Green) Limited and in respect of the ground floor of the premises situated at 92 -94 Borough High Street, London SE1. The applications sought a variation of the Premises Licence for AGC 1 of the existing Premises Licence and also for the grant of a Premises Licence for an additional 3 Adult Gaming Centres - AGC 2, AGC 3 and AGC 4. Copies of the applications are attached to this report as Appendix A.
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. Due to the posters initially not being displayed, the last date for representations was extended to 14th April 2009 to allow for 28 days consultation.

The Representations

Responsible Authorities

12. Southwark Council's Licensing Service has submitted a representation as a responsible authority with regard to all four applications under the Gambling Act 2005. The representation is made with regard to the licensing objective ***protecting children and other vulnerable persons from being harmed or exploited by gambling***. 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 B.

13. Southwark Council's Planning Department has submitted two representations with regard to the applications under the Gambling Act 2005. The representations are made with regard to AGC3 and AGC4 and relate to the licensing objective **protecting children and other vulnerable persons from being harmed or exploited by gambling**. The representations suggest that subdividing the premises is likely to result in the intensification of the site as a gaming centre with a resulting loss of amenity to adjoining occupiers. These representations are attached as Appendix C.

Interested Parties

14. Councillor Morris submitted a representation as an interested party with regard to all four applications under the Gambling Act 2005. The representation is made with regard to the licensing objective **protecting children and other vulnerable persons from being harmed or exploited by gambling**. The representation states that it is inappropriate to subdivide the premises into four separate premises in order to maximise the high stake machines. This representation is attached as Appendix D.

The Conciliation Process

15. 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

16. In September 2007 Mr Roger Etchells on behalf of Frankice (Golders Green) Ltd, applied for an AGC premises licence under the Gambling Act 2005. This licence was granted in October 2007. A copy of the Premises Licence for an AGC issued in respect of the application is attached as Appendix E.

Local Vicinity

17. A map of the local vicinity is attached as Appendix F. Whilst there are no gambling premises in the local vicinity within a 100m radius, the following premises are located just beyond the 100m radius:

- **Coral**, 97 - 99 Borough High St, London SE1
- **Agora**, 43 Borough High St, London SE1

Mandatory Licence Conditions

18. 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.

19. Additionally, the following mandatory conditions applicable to adult gaming centres 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 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)(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;

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

Default Licence Conditions

20. There are no default licence conditions for adult gaming centres.

Compliance with Conditions

21. 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 conditions listed in paragraph 19 above.

The Gambling Commission’s Code of Practice for Gambling Operators

22. 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.

23. Relevant to this Committee’s considerations are the social responsibility provisions of the operators licence.

24. 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.

25. 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.

26. The representations received in respect of this application relate to the third licensing objective *the protection of children and vulnerable persons from harm or from being exploited by gambling*. Section 122 of Southwark Council's Statement of Gambling 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.

27. 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."

28. The premises located at 92 / 94 Borough High St are set in a mixed commercial and residential area. A copy of a map of the local vicinity is attached as Appendix F.

Community Impact Statement

29. The contention raised by the representations is that by subdividing 92-94 Borough High St, there will be a proliferation of gambling in the Borough High St area and this will have adverse 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.
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 for each of the three new AGC applications, and £959.00 for varying the licence for AGC1. The total fee for all four applications is £6,710.00. 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 11.

CONCURRENT REPORT BY THE STRATEGIC DIRECTOR OF COMMUNITIES, LAW & GOVERNANCE– LEGAL ISSUES

34. The sub-committee is asked to determine an application to vary a premises licence under section 187 of the Gambling Act 2005
35. The sub-committee is also asked to determine an application for the grant an additional three premises licences under section 159 of the Act.
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 163 of the Act states that a licensing authority shall either grant or reject the premises licence application.
39. 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

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

42. 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.
43. 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.
44. 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.
45. 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

46. 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.
47. 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.
48. 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.
49. 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.

50. 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

51. 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 Agora 92 – 94 Borough High St		

APPENDICES

No.	Title
Appendix A	Copies of the applications
Appendix B	Southwark Licensing Representation
Appendix C	Southwark Planning Representation
Appendix D	Interested Party Representation
Appendix E	Copy of current premises licence
Appendix F	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	
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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	06 May 2009	