

MEMO: Licensing Unit

To Southwark Licensing **Date** 12 May 2009

Copies

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Subject Palace Adult Gaming Centre 3, First Floor, Elephant and Castle Shopping Centre SE1.

I make representation to the four applications under the Gambling Act 2005 for the premises known Palace Adult Gaming Centre 3, First Floor, Elephant and Castle Shopping Centre SE1 6TE under the grounds of protecting children and other vulnerable people from being harmed or exploited by gambling.

Firstly the application seeks to artificially separate the premises into five premises on the existing two premises, this is contrary to section 152 (1) (b) A premises licence - may not be issued in respect of premises if a premises licence already has effect in relation to the premises. Currently there are one Bingo premises and a Palace AGC1, one bowling premises that incorporates a Place AGC2 all on the same area of the Elephant and Castle Shopping Centre, there is a third AGC (Quicksilver) within the shopping Centre.

Secondly in the Gambling Commission Revised Guidance to Licensing Authorities 3rd Edition May 2009 Paragraph 7.13 states that the Commission does not consider that areas of a building that are artificially or temporarily separated can properly be regarded as different premises, some examples of temporary separation the guidance does not enter into guidance on artificial separation as is the case in this application.

7.14 states that the Commission recognise that different configurations may be appropriate under different circumstances but the crux of the matter is whether the proposed premises are genuinely separate premises that merit their own licence with, for example, the machine entitlements that brings and are not an artificially created part of what is readily identifiable as a single premises.

Paragraph 7.18 of the guidance states that In determining whether two or more proposed premises are truly separate, the licensing authority should be aware of factors which could assist them in making their decision. Depending on all the circumstances of the case these may include:

7.17 Licensing authorities should take particular care in considering applications for multiple premises licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:

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The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling where they are prohibited from participating.

Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not 'drift' into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.

Customers should be able to participate in the activity named on the premises licence.

7.18 In determining whether two or more proposed premises are truly separate, the licensing authority should be aware of factors which could assist them in making their decision. Depending on all the circumstances of the case, these may include:

Is a separate registration for business rates in place for the premises?

Is the premises' neighbouring premises owned by the same person or someone else?

Can each of the premises be accessed from the street or a public passageway?

Can the premises only be accessed from any other gambling premises?

There is an address listing currently in the Post Office database online search only for the Palace Bingo Club at this address.

Currently there are only two listing for business rates from the Valuation Office Agency which lists the premises as "PALATIAL LEISURE LTD 1ST FLR, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE" and "SUPERBOWL PT 1ST FLR, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE"

From the applications it can be seen that the proposed premises are all owned by the same person, indeed the applications were sent by the same company at the same time with one covering letter.

Other indicators are open to the committee to determine if these are indeed separate premises, for instance is there separate planning consent for each of the premises, while planning consent is not a requirement for grant of a premises licence it can be an indicator to show if there is one or four separate premises.

Paragraph 7.21 says that Licensing authorities will need to consider whether the effect of any division is to create a machine shed-type environment with very large banks of machines, which is not the intention of the access conditions, or whether it creates a public environment with gambling facilities being made available. Licensing authorities should, in particular, remember that where they have concerns about the use of premises for gambling, these may be addressed through licence conditions..

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Under the Gambling Act 2005 a premises is entitled to;

1. an unlimited number of category D gaming machines,
2. an unlimited number of category C gaming machines,
3. a maximum of **four (4)** category B3 or B4 gaming machines for an AGC or **eight (8)** for a Bingo premises

It is my opinion that it is the provision of category B3 gaming machines which is at issue in this particular case, as these can provide a £500 jackpot payment. The table below sets out the key differences between the relevant categories:

Machine Category	Maximum Charge For Use	Maximum Prize
Category D	10p 30p	£5 cash/ £8 non money prize
Category C	50p	£35
Category B3	£1	£500
Category B4	£1	£250

Thirdly the Gambling Commission gave recent advice on the definition of premises 28 April 2008 and letters dated 12 and 26 March 2008 which considers the Governments intention on the number of category B3 machines that premises allow (4 in the case of adult gaming centres, 8 in bingo premises) and seeks to curb unscrupulous operators from circumventing the law relating to the number of machines by artificially separating premises.

Fourthly I put forward that the Southwark statement of gambling licensing policy section 92 which looks at the location of the premises, it states that "The authority will give special consideration in relation to the proximity of premises to ... Areas where there is considered to be an over concentration of similar existing licensed operations." I put forward that splitting the premises into four effectively increases the amount of high payment category B3 machines from 4 to 16 and will produce an area of over concentration of high stake gaming machines to attract vulnerable persons to play.

Fifthly in a letter from Minister for Sport, Gerry Sutcliffe MP, it says that the Government is considering increasing the number of B3 machines legally available in bingo premises from 4 to 8 however he goes on to state "I have also considered whether AGCs should benefit from the increased machine entitlement I am proposing for bingo clubs. However, I am not persuaded on the basis of the evidence that has been presented to me that the same exceptional and special circumstances apply. For instance, no evidence has been presented of closures on the scale of those experienced in the bingo industry. In AGCs, gaming machine play is not an ancillary activity, nor is there any clear evidence of unmet demand for such machines. "

Sixthly there is a recent appeal at a Magistrate's Court (Luxury Leisure and South Tyneside Council) by an AGC operator on the refusal by the licensing authority to grant the splitting of their premises under the Gambling Act 2005, the decision by the authority was upheld and

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the appeal dismissed. While this case is not binding on this licensing authority members may consider the circumstances of the case in determining these current applications.

I therefore conclude that these applications seek to artificially separate an existing premises that contains an adult gaming premises into two to circumvent restrictions on the number of B3 machines that the premises are allowed against the intentions of Government and the Act and that, as a premises cannot have more than one licence, members should consider that the applications should be rejected and that matters regarding the number of machines on a premises be left to the consideration of the Government.

Copies of the documents mentioned in this representation are attached and form part of this representation, I reserve the right to submit additional supporting evidence on the definition of premises and under the objective of protecting children and other vulnerable people from being harmed or exploited by gambling to support this representation.



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25540021900039	SHOP	249	219 SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	6,400	N	01 Apr 2005	
2554003530000A	SHOP	249	353 SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	2,750	N	01 Apr 2005	
25540030000025	OFFICES AND PREMISES	203	HANNIBAL HOUSE (EXCL 1ST FL), ELEPHANT & CASTLE, LONDON, SE1 6TE	Deleted	N	29 Sep 2005	10
25540999910072	OFFICES AND PREMISES	203	PART BST SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	2,350	N	01 Apr 2005	
31110000120013	OFFICES AND PREMISES	203	PT 12TH FL HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	39,250	N	18 Aug 2006	26
2552099991004A	COMMUNICATION STATION AND PREMISES	066	ROOF TOP (1616) AT HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	15,500	N	01 Apr 2005	30
25520999910001	COMMUNICATION STATION AND PREMISES	066	ROOF TOP (5445) AT SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	13,000	N	01 Apr 2005	26
25520999910035	COMMUNICATION STATION AND PREMISES	066	ROOF TOP (90740) AT HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	15,500	N	01 Apr 2005	24
31110000200010	COMMUNICATION STATION AND PREMISES	066	ROOF TOP (GLN482) ROOF TOP AT HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	15,500	N	26 Oct 2006	26
25540001000002	COMMUNICATION STATION AND PREMISES	066	ROOF TOP SITE AT HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	8,750	N	01 Apr 2005	21
311100001200009	OFFICES AND PREMISES	203	SAVE PT 5TH FL HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	41,750	N	16 May 2006	17

311100001200011	OFFICES AND PREMISES	203	SCCP PT 8TH FL HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	42,500	N	08 May 2006	17
25540021510003	SHOP AND PREMISES	249	UNIT 215-216 SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	8,900	N	01 Apr 2005	
311100001200014	OFFICES AND PREMISES	203	VICTORY CHURCH INTERNATIONAL PT 12TH FL HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	39,500	N	18 Aug 2006	26
31110000120002	OFFICES AND PREMISES	203	2ND FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	92,500	N	29 Sep 2005	10
31110000120003	OFFICES AND PREMISES	203	3RD FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	92,500	N	29 Sep 2005	10
31110000120004	OFFICES AND PREMISES	203	4TH FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	92,500	N	29 Sep 2005	10
31110000120005	OFFICES AND PREMISES	203	5TH FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	92,500	N	29 Sep 2005	10
31110000120006	OFFICES AND PREMISES	203	6TH FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	92,500	N	29 Sep 2005	10
31110000120007	OFFICES AND PREMISES	203	7TH FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	92,500	N	29 Sep 2005	10

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31110000120008	OFFICES AND PREMISES	203	8TH FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	Deleted	N	06 May 2006	17 /
31110000120009	OFFICES AND PREMISES	203	9TH FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	92,500	N	29 Sep 2005	10 C
31110000120010	OFFICES AND PREMISES	203	10TH FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	92,500	N	29 Sep 2005	10 C
31110000120011	OFFICES AND PREMISES	203	11TH FL, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	92,500	N	29 Sep 2005	10 C
31110000120012	OFFICES AND PREMISES	203	12TH FLR, HANNIBAL HOUSE, ELEPHANT & CASTLE, LONDON, SE1 6TE	Deleted	N	18 Aug 2006	26
25540020020002	SHOP AND PREMISES	249	200-201, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	12,500	N	01 Apr 2005	
25540020300001	SHOP AND PREMISES	249	203, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	5,800	N	01 Apr 2005	
25540020400002	SHOP AND PREMISES	249	204, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	5,100	N	01 Apr 2005	
25540020500003	SHOP AND PREMISES	249	205, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	5,000	N	01 Apr 2005	
25540020800004	SHOP AND PREMISES	249	206, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	3,500	N	01 Apr 2005	
25540020700000	SHOP AND PREMISES	249	207-208, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	4,000	N	01 Apr 2005	

25540020900007	SHOP AND PREMISES	249	209, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	3,950	N	01 Apr 2005	
25540021000007	SHOP AND PREMISES	249	210, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	3,000	N	01 Apr 2005	
25540021120016	SHOP AND PREMISES	249	211, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	6,200	N	01 Apr 2005	
25540021220002	SHOP AND PREMISES	249	212, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	5,800	N	01 Apr 2005	
25540021337057	SHOP AND PREMISES	249	213, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	8,300	N	01 Apr 2005	
2554002140000B	SHOP AND PREMISES	249	214, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	6,600	N	01 Apr 2005	
25540021800004	SHOP AND PREMISES	249	218, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	5,200	N	01 Apr 2005	
25540022010007	SHOP AND PREMISES	249	220-221, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	10,250	N	01 Apr 2005	
25540022200007	SHOP AND PREMISES	249	222-223, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	18,500	N	01 Apr 2005	

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25540022720005	SHOP AND PREMISES	152	224-230 & 326-328, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	124,000	N	01 Apr 2005	23 M
25540023220009	SHOP AND PREMISES	249	232-233, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	8,100	N	01 Apr 2005	
25540023400007	SHOP AND PREMISES	249	234, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	7,300	N	01 Apr 2005	
25540023500008	SHOP AND PREMISES	249	235, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	6,400	N	01 Apr 2005	
25540023600009	SHOP AND PREMISES	249	236, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	5,000	N	01 Apr 2005	
25540023820038	SHOP	249	237A, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	7,700	N	01 Apr 2005	
25540023900016	SHOP	249	237B, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	8,900	N	01 Apr 2005	
25540023820022	SHOP AND PREMISES	249	237C & D-238, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	26,760	N	16 Apr 2007	24 N
25540023720022	SHOP	249	237C & D-239, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	Deleted	N	16 Apr 2007	24 N
25540023920022	SHOP AND PREMISES	249	239, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	9,000	N	16 Apr 2007	24 N
25540024000008	OFFICES AND PREMISES	203	240, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	1,250	N	01 Apr 2005	

25540024100002	SHOP AND PREMISES	249	241, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	3,100	N	01 Apr 2005	
25540024220007	BANK AND PREMISES	021	242-245, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	20,250	N	01 Apr 2005	
25540025320006	SHOP	249	253-254, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	Deleted	N	01 Apr 2005	23 M
25540025300000	SHOP	249	253, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	2,000	N	01 Apr 2005	23 M
25540025400000	SHOP	249	254, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	2,000	N	01 Apr 2005	23 M
25540025620009	SHOP	249	256-257, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	4,050	N	01 Apr 2005	
2554003310002B	RESTAURANT AND PREMISES	234	331-332 & STORE G, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	44,500	N	01 Apr 2005	
25540033700007	SHOP AND PREMISES	249	337, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	49,000	N	01 Apr 2005	
25540033900009	SHOP AND PREMISES	249	339, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	27,750	N	01 Apr 2005	

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				25540999630001	ADVERTISING RIGHT	003	ADVERTISING RIGHT 01280049 (BUS SHELTER) O/S E & C. SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	900	N	01 Apr 2005	
				25540999730002	ADVERTISING RIGHT AND PREMISES	003	ADVERTISING RIGHT 01280153 (BUS SHELTER) O/S E & C. SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	500	N	01 Apr 2005	
				25540034100033	OFFICES AND PREMISES	203	FARADAY SUITE PT 1ST FLR. SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	42,250	N	01 Apr 2005	
				25540034100048	BINGO HALL AND PREMISES	025	PALATIAL LEISURE LTD 1ST FLR, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	318,750	N	01 Jul 2007	21 J
				2554059973701B	STORE AND PREMISES	268	STORE 1 R/O 308-309, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	1,000	N	01 Apr 2005	
				25540020000028	BOWLING ALLEY AND PREMISES	028	SUPERBOWL PT 1ST FLR, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	190,000	N	01 Apr 2005	
				2554099991000B	MARKET AND PREMISES	165	THE MOAT, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	21,000	N	01 Apr 2005	
				25540021700003	SHOP AND PREMISES	249	UNIT 217 SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	7,400	N	01 Apr 2005	
				25540023100019	SHOP AND PREMISES	249	UNIT 231, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	8,500	N	01 Apr 2005	
				2552002500000B	SHOP AND PREMISES	249	UNIT 250, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	3,250	N	01 Apr 2005	
							UNIT 252 SHOPPING CENTRE,				

25540025200001	SHOP AND PREMISES	249	ELEPHANT & CASTLE, LONDON, SE1 6TE	2,250	N	01 Apr 2005
25540025500004	SHOP AND PREMISES	249	UNIT 255, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	2,150	N	01 Apr 2005
2554003400014B	SHOP AND PREMISES	249	UNIT 352, SHOPPING CENTRE, ELEPHANT & CASTLE, LONDON, SE1 6TE	9,300	N	01 Apr 2005

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25 April 2008

ADV 08/08

Definition of premises

The Gambling Commission (the Commission) intends to strengthen the guidance it issues to local authorities under section 25 of the Gambling Act 2005 (the Act) relating to the definition of premises. This will include changes to part seven of the 'Guidance to Licensing Authorities (2nd edition June 2007)' document. This has been prompted by increasing numbers of premises licence applications being made to licensing authorities which appear to be in conflict with the intentions of Parliament.

The intention of Parliament regarding the definition of premises

Parliament's intention relating to the number of higher category gaming machines available for use in gambling premises is set out on the face of the Act. In particular, section 172 the Act places restrictions on the number and categories of gaming machines that can be made available in casinos, bingo premises, betting premises and adult gaming centres.

Parliament's intention relating to access between different types of gambling premises is set down in regulations, through the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007 (SI 2007/1409) and the Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007 (SSI 2007/266). The Government's intention behind restricting access between certain gambling premises in this way is set down in the Department for Culture, Media and Sports' document 'Explanatory Memorandum to the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007'. Paragraph 7.6 of this document reads:

"The Act provides that... a single premises may not have more than one premises licence authorising a type of gambling activity. There were concerns that some unscrupulous operators might seek to circumvent this by artificially subdividing their premises and securing separate premises licences for its composite parts, which would undermine the different categories of premises licence created by the Act... we wanted to ensure that operators do not circumvent the rules governing the maximum number of gaming machines of Category B and above permitted in different premises. And finally, we were determined to ensure that all gambling premises have publicly accessible entrances, and are not developed in the backrooms of other commercial premises. The department decided to address these concerns by proposing conditions which restricted the access between different types of gambling premises."

The full text of the Explanatory Memorandum can be found [here](#). It refers only to the regulations for England and Wales, however the Memorandum also reflects the policy intentions behind the equivalent Scottish regulations.

Strengthening the guidance

Currently, the Commission's guidance at paragraphs 7.11 and 7.12 of the 'Guidance to Licensing Authorities (June 2007)' document describes what may be considered as a premises. Paragraph 7.1 states that:

"...there is no reason why a single building could not be subject to more than one premises licence, provided they are for different parts of the building, and the different parts of the building can reasonably be regarded as being different premises."

However, this paragraph goes on to describe that this approach has been taken in order to allow large, multiple unit premises to obtain premises licences, as long as appropriate safeguards are in place. Any sub-division of an existing premises must of course comply with the mandatory conditions relating to access between premises. Paragraph 7.12 then suggests that whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances such as its location and the suitability of the separation. The guidance also states that the Commission does not consider that areas of a building that are artificially or temporarily separated can properly be regarded as different premises.

We intend to add a further section to this part of the 'Guidance to Licensing Authorities (June 2007)' document to further emphasise Parliament's intentions of the Act regarding the definition of premises, and to make clear that premises existing under the Act must be genuinely separate with the required access and supervision requirements in place.

The new section will also include guidance on providing the principal gambling activity in all premises licensed under the Act. This is to assist licensing authorities considering applications for multiple premises licences on a single site, where they need to be satisfied that the primary purpose of the premises licence is being fulfilled, ie betting facilities are provided in a betting shop, players can fully participate in bingo at all bingo premises, and so on.

This updated guidance will be based around our position as set out in our open letter to trade associations: [first letter](#), and our follow-up letter which confirms that there needs to be an acceptable balance between the provision of the principal gambling activity and the provision of gaming machines: [second letter](#).

Next steps

The Commission is committed to full consultation on any changes to the 'Guidance to Licensing Authorities (June 2007)' document. We expect to issue a consultation paper in May 2008 detailing our proposed revisions to our guidance, and will publish a final version during the summer.

The Commission will continue to monitor the way in which operators seek to use the provisions of the Act. If it becomes clear that operators are attempting to provide what are, in effect, higher category machine arcades under the guise of either a betting or bingo premises licence with only token betting or bingo provision we will not hesitate to introduce operating licence conditions and / or recommend to the Department for Culture, Media and Sports and Scottish Ministers that additional regulations are required to underpin the clear policy intentions of the Act.

Licensing authorities that are currently considering premises licence applications to divide an existing premises into multiple premises may wish to refer to the sections of the Explanatory Memorandum highlighted above, and to the Commission's draft revised guidance which we will shortly be consulting on. We will consider also the application of our updated guidance towards premises that have already been divided.

If the premises licence applications refer to bingo premises licences, licensing authorities are reminded that the Commission has published an information paper summarising some considerations, which is available [here](#).

GAMBLING COMMISSION

12 March 2008

LET08/03

Dear Colleague

Provision of facilities for gambling in premises licensed under the Gambling Act 2005

The Gambling Commission is aware that some operators (in particular existing AGC operators) may be considering applying for licences, even though they do not intend to provide the primary activity the licence is intended to authorise on their premises. The operators may be applying for betting or bingo operating and premises licences under the Gambling Act 2005 (the Act) because they believe that this will allow them to take advantage of the gaming machine entitlements which accrue from such licences.

Having carefully considered this matter, it is the Commission's view that such an arrangement is not permissible. In the Commission's opinion an operator must provide the principal activity authorised by their operating and premises licences, before they are able to take advantage of any additional entitlement to make gaming machines available for use on their premises. We have set out below some examples of the situation we are describing:

Betting premises

The Commission is aware that there may be operators who intend to apply to the local licensing authority for a betting premises licence on the basis that they intend to provide four category B2 gaming machines on the premises but do not intend to offer any facilities for betting on the premises. In the Commission's view, it is not permissible for an operator to provide gaming machines in this way without also offering facilities for betting.

A betting operating licence authorises its holder to '*provide facilities for betting*' (section 65(2)(c) of the Act). Likewise, a betting premises licence authorises premises to be used for '*the provision of facilities for betting...*' (section 150(1)(e) of the Act). The ability to make up to four gaming machines, within categories B2 – D, available is an additional authorisation conferred upon the holder of a betting premises licence (section 172(8) of the Act); it is not a free standing right to make gaming machines available for use. It follows that unless a betting premises operator offers facilities for betting it should not be making gaming machines available on the premises in question.

Bingo premises

The Commission is also aware that there may be operators who intend to apply for bingo premises licences on the basis that they intend to make gaming machines available but do not intend to offer facilities for bingo on the premises.

A bingo operating licence authorises its holder to '*provide facilities for playing bingo*' (section 65(2)(b) of the Act). Likewise, a bingo premises licence authorises premises to be used for '*the provision of facilities for the playing of bingo*' (section 150(1)(b) of the Act). It follows that a bingo premises should not make gaming machines available for use without also offering facilities for playing bingo.

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Thus, while the Commission acknowledges that gaming machines at bingo premises can be made available for use at times when bingo is not being played at the premises, the fact remains that the operator must provide facilities for the playing of bingo at the premises in order to enjoy the machine entitlement.

Consideration of applications for operating licences

In order to avoid operators applying for licences on the basis of a misunderstanding about what the licence authorises them to do, the Commission may, when it receives an application for an operating licence, contact the applicant to check that they do intend to offer the primary gambling activity for which the category of licence is intended before going on to consider the application in detail.

The Commission also intends to inform licensing authorities of its position in order that they can be aware of any implications for their local licensing activity and we are considering the nature of guidance that should be issued to licensing authorities on this matter under section 25 of the Act.

Existing licence holders

The Commission is aware that there may be gambling premises, which are already in existence, that do not provide the primary licensed activity covered by their licences but do make gaming machines available on the premises. The Commission is also aware that some of these premises may have been in existence under previous legislation and may, as a result, have been entitled to convert their old permissions into operating and premises licences. However, as you will know, the gaming machine regime under previous legislation and that under the 2005 Act differ in material respects.

In such cases the Commission intends, over the coming months, to contact any such operators and the relevant licensing authorities as part of our wider compliance programme, with a view to agreeing a suitable approach for achieving compliance with the requirements of the Act.

I hope that this letter clarifies the Commission's position. If you have any questions please call 0121 230 6666.

Yours sincerely

Hazel Canter
Director of Licensing and Compliance
Gambling Commission

GAMBLING COMMISSION

26 March 2008

LET08/05

The provision of betting facilities in licensed betting premises

I refer to the Commission's recent letter regarding the circumstances under which gaming machines are made available for use on licensed betting premises.

The Commission is aware that some commentators have questioned whether the Commission's interpretation of the legal position is correct. The Commission is also aware that some operators may be considering making minimal facilities available for betting, as a means of addressing the issue. For example, the Commission has been asked whether it would be sufficient to offer a single betting terminal, on the basis that the single betting terminal would amount to providing facilities for betting on the premises in question.

The Commission recognises that ultimately it is for the Courts to decide how statutes should be interpreted. However, having further considered matters in the light of the representations we have received on this issue, the Commission remains of the view that an operator must offer the primary activity of betting facilities in order to take advantage of the additional gaming machines entitlement which is conferred upon licensees of premises providing betting facilities. There can be little doubt that this was what Parliament intended and what we consider the Act to have achieved.

The Commission is concerned, therefore, by the prospect that some operators of licensed betting premises may be considering making available only the barest minimum of betting facilities. As a result, we thought that we should alert you to our concerns and to the steps open to the Commission if it considers it necessary to take further steps to control the circumstances under which gaming machines are made available for use.

Maintaining an appropriate balance between the availability of gaming machines and the provision of facilities for betting

In the Commission's view it is also important, in relation to the licensing objective of protecting vulnerable persons from being harmed or exploited by gambling, that customers should be offered a balanced mix of betting and gaming machines in licensed betting premises. Thus, whilst the Commission recognises that betting premises are permitted to offer gaming machines, including B2 gaming machines, the Commission considers that betting should be a core element of the gambling facilities being offered to customers in such premises.

The Commission thinks that such an approach supports the delivery of the licensing objectives of the Gambling Act 2005, as it means that customers are able to make a choice whether to place bets or play machines, which are more repetitive in nature and have a relatively quicker speed of play.

Licence Conditions

For the reasons outlined above, the Commission considers that it would be undesirable for betting premises to offer only or predominantly gaming machines.

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As such, if it became necessary the Commission would consider whether it should impose a condition on licences to prevent the use of betting premises for the provision of gaming machines as the principal or only activity.

In monitoring operators' continued suitability to provide facilities for gambling, the Commission may also review an operating licence if it appears to the Commission that an operator is not offering betting facilities in a manner which supports the pursuit of the licensing objectives.

Regulations

If necessary too, the Commission will consider recommending to the Secretary of State that further Regulations should be made under section 240 of the Gambling Act 2005 to control the circumstances in which gaming machines are made available for use.

I hope this clarifies the Commission's position on this matter. As I have indicated we continue to consider that the way the Act is constructed requires betting facilities to be provided in premises with a betting licence and furthermore that those facilities must not be merely ancillary to any machines provided. You should be aware that if the courts were to take another view, we would consider the introduction of conditions as a matter of urgency to achieve the same policy outcome.

If you would like to discuss the implications of this for your business please email me with contact details or phone my office on 0121 230 6570 or our enquiry line on 0121 230 6666 and we can arrange for someone from the Commission to call you.

Hazel Canter
Director of Licensing and Compliance
Gambling Commission

EXTRACT FROM THE SOUTH AFRICAN STATEMENTS OF GAMBLING LICENSING POLICY.

Definition of "premises"

88. Premises are defined in the Act as "any place". A single premises cannot have multiple premises licences allowing different types of gambling at different times. However, a single building can be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. Whether different parts of a building can properly be regarded as being different premises will always be a question of fact in the circumstances. However, the Gambling Commission does not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises.

89. This licensing authority takes particular note of the Gambling Commission's Guidance for local authorities which states that

- Licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware that entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not 'drift' into a gambling area.
- Licensing authorities should pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Clearly, there will be specific issues that authorities should consider before granting such applications, for example whether children can gain access; compatibility of the two establishments; and ability to comply with the requirements of the Act. But, in addition, an overriding consideration should be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should, be prohibited under the Act.

90. It should also be noted that an applicant cannot obtain a full premises licence until the premises in which it is proposed to offer the gambling are constructed. The Gambling Commission has advised that reference to "the premises" are to the premises in which gambling may now take place. Thus a licence to use a premises for gambling will only be issued in relation to premises that are ready to be used for gambling. This authority agrees with the Gambling Commission that it is a question of fact and degree whether premises are finished to a degree that they can be considered for a premises licence. The Gambling Commission emphasises that requiring the building to be complete is necessary to ensure that the authority and other responsible authorities with inspection rights can inspect the premises fully.

Location

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.

94. Although this authority recognises that nuisance is not one of the three stated licensing objectives and that the guidance to the Act states that disorder is intended to mean activity that is more serious than nuisance, this authority will receive information from the Council's environmental health noise team on nuisance issues as being relevant to matters of location of premises.

Duplication with other regimes

95. This authority will seek to avoid any duplication with other statutory / regulatory systems where possible, including **planning**.

96. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it.

97. However, applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. Licensing applications should not be a re-run of

Written Ministerial Statement

Gaming Machines

Minister for Sport (Gerry Sutcliffe MP):

In recent months I have received a range of representations from trade bodies in the gambling industry seeking changes to the regulatory regime for gaming machines established by the Gambling Act 2005 ("the Act"), and implemented by secondary legislation from 1 September 2007.

Through the Act, we have established a comprehensive new system of regulation for gaming machines, with consumer protection at its heart. Our number one priority remains to protect the public, and I have considered the representations we have received with this uppermost in mind.

A number of Hon Members have expressed support for the campaigns led by the Bingo Association and the British Amusement Catering Trades Association (BACTA). I have also received representations from the British Beer and Pub Association, the British Association of Leisure Parks, Piers and Attractions and the British Casino Association. I wish now to report to the House the government's response.

While the evidence that has been presented from across the industry is mixed, the government recognises that many operators have found trading conditions difficult.

There are likely to be a range of reasons for the current downturn. While the evidence presented to me concentrates almost exclusively on regulatory factors, it attaches lesser or no weight to a range of other plausible factors such as levels of investment in product development, longer term structural and technological changes and wider economic factors. Whilst it is open to government to take action within the framework of the Act, the industry must recognise and find its own solutions to some of these problems.

Representations have also been made to me concerning what were dubbed under the previous legislation Section 16 and Section 21 machines. Whatever the view in some sections of the industry of what earlier legislation permitted, there seems little value in prolonging that debate now. The current legal position is beyond doubt.

The new system of regulation established by the Act, and the strict limits it imposes, were set only after lengthy debate during pre-legislative scrutiny, the passage of the Gambling Bill, and on the relevant secondary legislation. The principal trade bodies, including the Bingo Association and BACTA, played a full role throughout the passage of this legislation, and in the public consultation that preceded it.

I must consider the requests for changes within the new framework established by the Act and agreed recently by Parliament. That framework gives Parliament the final say; it is for the government to decide what proposals should be put to public consultation and then presented to Parliament for consideration.

I have concluded that there is strong evidence that the situation in the bingo industry has been particularly acute. Between 31 March 2004 and 31 March 2007 the number of bingo clubs operating fell from 696 to 634. A further 37 clubs closed during 2007/08, around 6% of the industry.

Colleagues in the House will recognise that bingo clubs fulfil an important social function in many communities. The 2007 Henley Report commissioned by the Bingo Association found that for many people, especially older and retired women, bingo is the main or sole leisure pursuit outside of the home. Despite the range of deregulatory measures that we have already introduced to assist the industry, it is clear that the future of bingo clubs in many communities is under threat.

I am persuaded that a number of other special circumstances apply to bingo. These include the fact that under the industry's business model there is high demand for machines during short periods of the day, which may impair the fair and open conduct of gambling.

I have also noted two additional points made by the Bingo Association that:

- while in recognition of the enhanced social responsibilities imposed by the Act, casinos, betting shops and adult gaming centres (AGCs) received an enhanced gaming machine entitlement, bingo halls retained the same machine entitlement as under the Gaming Act 1968; and,
- bingo halls provide a softer gambling environment in which gaming machines are ancillary to bingo.

The Bingo Association has argued that, to help arrest the decline, the number of Category B3 machines (£1 maximum stake, £500 maximum prize) which bingo halls are permitted should increase from four currently to as many as 16. In my view this goes too far. An increase of this proportion would be inconsistent with the precautionary approach that the government has taken to gambling regulation.

Nevertheless I am persuaded that the situation facing the bingo industry is sufficiently grave, and the circumstances surrounding bingo sufficiently distinct, to justify considering whether a smaller increase might be appropriate without jeopardising our principal priority, which remains to protect the public.

For this reason, I have decided to consult on a proposal to increase to eight the number of Category B3 machines which bingo clubs may offer. This enhanced entitlement will only apply to bingo halls which operate a strict over 18s entry policy. If in the light of public consultation we decide to proceed, we will bring forward the necessary Order. This will be for Parliament to approve by means of an affirmative resolution.

I have also been struck by the representations I have received from Hon Members on all sides in support of seaside arcades. Family entertainment centres, which are not permitted to offer high stake, high prize Category B gaming machines, form an integral part of many families' seaside holidays or day trips. I want to see that continue.

The government has already taken steps to help seaside arcades. In October 2006, in response to requests for assistance from the industry and a year earlier than planned, we increased the stake and prize levels for Category C gaming machines to 50p and £35 respectively. These changes benefited not only seaside arcades, but also pubs, bingo clubs and AGCs, as well as gaming machine manufacturers and suppliers.

To give the industry certainty and to enable it to plan properly, we made a commitment to review stakes and prizes again in 2009. However, in view of the difficult trading conditions which many operators are now reporting, I have decided on an exceptional basis to bring forward the planned review by one year for the lowest categories of gaming machine --

Categories C and D. Category D machines include 10p stake and £5 prize fruit machines, as well as traditional seaside amusements like penny falls and crane grabs.

The industry must recognise that this is a one off. I am mindful of the risk that, coming so soon after the 2006 changes, an early review could perpetuate a view in some sections of the industry that ever increasing stake and prize levels are the only answer to the pressures it faces. This may lead to tensions in terms of the licensing objectives, and act as a disincentive to the industry to explore other ways to freshen its appeal. At the same time, I understand the need for certainty among manufacturers and operators alike on the date of future reviews.

In addition, I am therefore announcing today that I have decided to reinstitute the system of triennial reviews that grew up by custom and practice under the previous legislation. This will mean that, after the 2009 review (part of which I am bringing forward to this year), the next review will take place in 2012.

In view of the priority which the industry attaches to an early review, I am adopting a fast track process. We are writing today to trade bodies, faith groups and others with an interest in problem gambling, to invite submissions on what stake and prize levels should apply for machines in Categories C and D during the period until 2012.

Having carefully considered these submissions, I will formulate proposals and, prior to formal consultation, seek advice from the Gambling Commission on whether any of these proposals raise concerns in terms of the licensing objectives. There will then be a formal three month consultation before any legislation is brought forward. Any changes will be for Parliament to approve, again by means of an affirmative resolution. I intend to complete the consultation with a view to returning to Parliament with any necessary Order in the autumn.

There is no guarantee that this review process will result in increases. It will be for the industry to make that case, and for wider stakeholders to state their views.

I have considered carefully whether the evidence that has been presented would justify extending this early review to high stake, high prize gaming machines in Categories B1, B2, B3, B3A and B4. In particular, I have carefully considered BACTA's call for an immediate doubling in the maximum stake on Category B3 machines, found in AGCs and bingo halls, from £1 to £2.

A key element of BACTA's case is that customers have found the Category B3 machine with its £1 stake and £500 prize unattractive, and that this has led in turn to customers migrating from AGCs to play Category B2 machines (commonly known as fixed odds betting terminals) in betting shops. Little in the way of convincing evidence has been submitted to substantiate this claimed migration.

I have consistently made it clear that I view the growing popularity of Category B2 machines and other high stake, high prize gaming machines with concern. That is why in March I asked the Gambling Commission to prioritise research in this area. The aim is to explore the available research which assesses whether there is any evidence:

- of causal links between the availability of high stake, high prize gaming machines and the development of problem gambling;
- regarding the attraction of these machines to existing problem gamblers;
- that existing gambling problems are exacerbated by access to these machines.

Work is already underway and, by the end of July 2008, the Commission will recommend what, if any, further research is needed. The Commission expects to publish the findings from any further work in June 2009.

If evidence emerges that Category B2 machines are a particular problem, I will not hesitate to use the extensive powers under the Act to regulate them more stringently. In the meantime, I have concluded that it would not be appropriate to review stake and prize levels for Category B machines, or to agree to BACTA's specific proposal, before the Commission's work is complete and Ministers and Parliament can consider any new findings which emerge. The government has committed to review stake and prize levels on all categories of machine in 2009, and we will make good on this commitment in respect of Category B machines once the Commission has reported.

I have also considered carefully a proposal by BACTA that adult gaming centres – arcades restricted to over 18s found on many high streets – should be permitted to make available Category B3 machines on a ratio of 20% to the total number of gaming machines provided, in place of the current limit of four machines per premises.

I have, however, concluded that this proposal would not provide sufficient certainty about the total number of B3 machines in individual AGC premises, or across the AGC estate as a whole. It could create the potential for larger machine sheds with significant concentrations of high stake, high prize gaming machines in easily accessible high street locations. I am concerned that this could have an adverse impact in terms of the licensing objectives.

I have also considered whether AGCs should benefit from the increased machine entitlement I am proposing for bingo clubs. However, I am not persuaded on the basis of the evidence that has been presented to me that the same exceptional and special circumstances apply. For instance, no evidence has been presented of closures on the scale of those experienced in the bingo industry. In AGCs, gaming machine play is not an ancillary activity, nor is there any clear evidence of unmet demand for such machines.

While I understand that this will come as a disappointment to AGCs, they will of course benefit from any increases to stake and prize levels of Category C machines, which form the bulk of their machine offer.

[Ends]

IN THE SOUTH TYNESIDE MAGISTRATES' COURT

DISTRICT JUDGE ELSEY

24TH JULY 2008

BETWEEN:-

LUXURY LEISURE

Complainant

- and -

SOUTH TYNESIDE COUNCIL

Respondent

AGREED NOTE OF JUDGMENT
(for approval by the Judge)

1. I have been hearing a complaint by which Luxury Leisure appeals against a decision of the Respondent's Licensing Sub-Committee regarding applications for Adult Gaming Centres ("AGCs") licences.
2. Applications have been submitted regarding the complainant's premises at 11-12 King Street; 58-62 Ocean Road, 527-529 Stanhope Road and 295-297 Prince Edward Road. All these addresses are in South Shields. The complainant already holds AGC licences regarding these premises but sought to subdivide and to licence in relation to the subdivided parts. If the licences were granted then Luxury Leisure would be permitted to install a further 4 B3 gaming machines in each newly created area.
3. In reaching my conclusions I have taken into consideration oral submissions by Mr Michael Fordham QC for Luxury Leisure and Mr James Findlay QC for the Respondent and have also been assisted by helpful skeleton arguments by both parties, bundles of plans and photographs and documentary evidence. Most importantly, I have been able to view all the properties which has enabled me to envisage how the applications would effect the alteration of the properties.
4. In essence the issue is whether the law permits Luxury Leisure to hold separate AGC licences for different areas in the same building. It is clear it is possible that a number of different licences can be held regarding the same building. In this case, more specifically the question is can you get two or more licences for premises which previously had one licence? Deciding that, I have to decide whether the proposed subdivisions create separate premises.

5. Section 37 of the Gambling Act 2005 is the starting point of the legal analysis. It provides that a premises licence is required to make gaming machines lawfully available for use. Section 152(1)(b) provides that a premises licence cannot be issued regarding premises if a premises licence already has effect regarding the premises. Section 353(1) provides that, for the purposes of the Act, "premises" "includes any place and, in particular – (a) a vessel, and (b) a vehicle". A substantial part of Mr Fordham's submissions rests on that definition and he very strongly urges me to consider that it is a helpful definition. Indeed, he submits that the Licensing Sub-Committee fell into error when they stated that they did not find it helpful.

6. Mr Fordham drew attention to the Gambling Commission's Guidance to Local Authorities, dated June 2007, where at §7.11 the meaning of the word "premises" is considered. The paragraph reads:

"'premises' is defined as including 'any place'. Section 152 therefore prevents more than one premises licence applying to any place. But, there is no reason in principle why a single building could not be subject to more than one premises licence, provided they are for different parts of the building, and the different parts of the building can reasonably be regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, track, or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about sub-divisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed."

7. That there have been difficulties in considering how the statute ought to be applied is illustrated by the Gambling Commission consultation on "split premises", dated June 2008. §2.1 reads:

"While the definition of premises in the Act is ostensibly unrestricted, in the context of premises licences and the entitlement to machines (which varies with the type of premises licence), the Commission takes the view that the Act clearly envisages premises that are distinct entities and recognizable as such. If this were not the case, the different machine entitlement provisions would be meaningless. The policy intention built into the Act is to restrict the number of high value machines per premises. It appears to the Commission that some operators are adopting an approach to the meaning of 'premises' which departs from common sense with a view to encouraging local authorities to grant more than one licence for adjoining 'units' and thereby increase the number of high value machines available in what is, in reality (and, we believe, in law) a single premises."

8. In my judgment it would be wrong of me not to accept that the policy intention of the Act is as set out in §2.1 and I should bear that in mind in giving a purposive interpretation to "premises". Such an interpretation is

not inconsistent with *Daniel Thwaites v Wirral Borough Magistrates Court* [2008] EWHC 838 (Admin): that licensing activities should be restrained only where necessary to restrain something which would be contrary to the licensing objectives. This is also consistent with *Majorstake Limited v Curtis* [2008] UKHL 10.

9. Taking all of these factors into consideration, the question to ask is if Luxury Leisure's proposals, if implemented, would create objectively recognisable separate places within the buildings which are the subject of the applications. I can take into account the matters the Secretary of State sets out in the mandatory conditions in the Gambling Act (Mandatory and Default Conditions) (England and Wales) Regulations SI 2007/1409. But in themselves they do not provide the answer whether in a particular building premises will be created by implementing the plans.
10. I regret to say that having viewed the buildings I do not consider that new places would be created. The effect would be to create further subdivisions in an existing area; rather like creating a breakfast bar between the kitchen and living area in a studio flat.
11. I am not saying that it is never possible to reconfigure these buildings as separate premises, especially since they used to be made up of separate postal addresses.
12. I am conscious that the conclusion I have reached is different to a preponderance of licensing authorities. It is however significant that my opinion is congruent with the Gambling Commission and I would adopt §7.19 of their proposed amended Guidance regarding the appropriate factors to be taken into account. In my judgment these factors are already implicit in the words in the legislation and do not constitute new guidance.
13. It follows that the appeal is to be dismissed.
14. And I therefore do not have to rule on the technical issue or the direct access issue. However, in so far as it is relevant, I agree with the Respondent's case regarding direct access but not on the technical issue. The refreshment areas do not in reality prevent direct access and would not in reality be accessed by members of the public for purposes other than gambling. I agree with Luxury Leisure regarding the technical issue, that the licence could be surrendered and replaced with new licences.
15. Since I have no doubt that plans could be drawn which could effect the creation of new premises at these addresses, I have considered remitting the applications to the licensing committee. The direction I would have to give would be for the committee to consider revised plans which would in effect need to be agreed with the respondents. I will discuss this with Counsel.

[submissions on remittal]

16. I have had to consider whether to exercise my discretion to remit to the Sub-Committee with a direction to consider revised plans. The Respondent authority is perfectly justified in seeking to protect the public purse but I am persuaded that the balance of proportionality is in the complainant's favour and I therefore remit.

[submissions on costs]

17. Being generous, the technical issue was probably around 15%. The Respondent is to get its costs with a 15% deduction. There should be agreement on what the costs are and 15% deducted, to be taxed if necessary.

Michael Fordham QC
Shaheed Fatima
Counsel for the Complainant

James Findlay Q.C.
Counsel for the Respondent

Approved

Rupert Elsey

RJ(mic)

25/9/08

LEISURE WORLD (UK) LTD

Appellant

v

LONDON BOROUGH OF ISLINGTON

Respondent

This appeal is brought by Leisure World (UK) Ltd (Agora) against the refusal by London Borough of Islington (Islington) to, in essence, permit Agora to divide the area for which it has been granted an AGC Licence into 3 units, each to hold a separate AGC Licence, thereby enabling each to provide up to 4 type B3 gaming machines, they being the most popular type for customers and apparently most profitable for providers. I am not aware of any wish by Agora to divide its premises without that outcome arising.

Agora has been frank in stating that the sole purpose of the proposed division is to maximise the commercial possibilities provided by the law. It seeks to distinguish between this approach and what may be characterised as getting round the limitations imposed by that same law. Islington sees the proposal as just such a device and argues that it constitutes the sort of artificial sub-division of premises that, in reality, does not create three premises, each of which falls to be considered as eligible for a grant of an AGC Licence.

Even if that argument fails, Islington argues that this court should reject the appeal on the basis that the creation of three premises where previously there was just one, with the consequent tripling of the number of class B3 machine available, would be contrary to the spirit of the Act and to Parliament's intention in limiting the number of such machines to 4 per premises. In the materials provided before the hearing and in the course of that hearing, nobody was able to explain the reasoning of Parliament in creating that particular numerical limit. Nevertheless, the existence of the limit and acceptance that Parliament must have had a reason for imposing it, must be the starting point for any consideration of the issues raised in this appeal.

It has been pointed out that the Act does not contain any provision enabling an authority to limit the number of licensed premises. Nevertheless, when deciding any application, the authority is entitled to take into account all relevant considerations. If the appellants had applied originally for licences in the way they now seek to do, Islington, in its various capacities, the Planning Inspector and the Crown Court would all have been dealing with applications for amusement centres, then AGCs from 3 premises, next door to each other, all owned and operated by the same company. In essence, if the argument about the division of the premises were to succeed, that is the nature of the current application and appeal.

Islington refused the application on three grounds: that the application was contrary to the spirit of the Act; that the proposal would be harmful to, or fail to protect vulnerable people; that the smaller premises created by sub-division would be unsuitable for use because of congestion and over-crowding.

At the appeal hearing, it was argued that the first, and most important ground of refusal encompassed several specific points found in the explanatory memorandum. In particular, paragraph 7.6 says, as far as is material, "a single premises may not have

more than one premises licence authorising a type of gambling activity. There were concerns that some unscrupulous operators might seek to circumvent this by artificially subdividing their premises and securing separate premises licences for its composite parts." It is perhaps unfortunate that the pejorative term "unscrupulous" was contained in this description of an action the nature and outcome of which are what is significant, not any judgment of the operators.

In this case, Islington argues that the division proposed is just such an artifice as the memorandum suggests should be resisted. Islington further argues that the proposed sub-divided units cannot "reasonably be regarded as being different premises." It argues that, each being owned and operated by the same company, under the same logo, albeit with variety of machines and décor between the units, they do not constitute separate premises as envisaged by the Act and regulations. Success with this argument would be determinative of the appeal.

Agora argues that the erection of permanent walls between and separate entrances to each of the proposed units makes each into separate premises capable of being licensed individually. The modifications made since the original application, whatever the reason for them, clearly produce an outcome from which it can more easily be argued, looking at the physical lay-out, that the premises "can reasonably be regarded as being different premises."

In determining which of these arguments succeeds, I am mindful of the balance that needs to be struck between the essentially permissive aim of the statute and the need to prevent the avoidance of restrictions contained within the law by a device that may be argued to comply with the letter of the law but is no more than a device for getting around those restrictions.

I am also mindful of the guidance that

"licensing authorities should pay particular attention if there are issues about sub-division of a single building"

"Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances"

"...the crux of the matter is whether the proposed premises are genuinely separate premises that merit their own licence with, for example, the machine entitlements that brings and are not artificially created part of what is readily identifiable as a single premises".

The guidance sets out various factors to be considered when determining this issue. In some respects, the proposal satisfies the tests set out in these questions. In others, it does not. The questions are clearly aimed at meeting different circumstances and cannot be regarded as either exhaustive or necessarily determinative of the issue in any particular case. Examples are given which may or may not be helpfully adopted in individual cases. The overall aim is clearly to ensure that the limitations included in the Act are not avoided by devices that are nothing more than that.

Islington argues that the term "artificial" can relate to the artifice of the device itself rather than merely to the physical manner of division. I agree with this broader interpretation of

the word, both because it chimes more easily with the context in which it is found and because it corresponds with the natural meaning as found in the Shorter Oxford Dictionary where "artificial" is defined as "made by or resulting from artifice" and "artifice" is defined as having the ordinary sense of "an ingenious expedient, a manoeuvre, device, trick." I consider Agora's proposed division of the premises into three, for the sole purpose of getting around the limitation on type B3 machines, to be just such an ingenious expedient or device.

I consider that the artificial division of the premises into three units would not result in the creation of three sets of premises, each entitled to its own licence. All would be contained within the area for which the original application was made and for which, on appeal, a single AGC licence was granted. All would be run by Agora, to whom all profits would go. On this basis, I reject the appeal.