

The Licensing of Betting Shops – Legal Position

Proliferation of betting shops – Situation in Southwark

1. The main report acknowledges growing concerns over the perceived clustering or over-proliferation of betting shops in the high street, particularly in more deprived areas of the borough.
2. Examination of licensing records since the responsibility for issuing gambling premises licences was passed to local licensing authorities in 2007 does not show any growth in numbers within Southwark. In fact, the number of licensed betting shops in Southwark in May 2013 (74) represents a reduction of 3 premises from the number licensed in the first year 2007 (77).
3. During the 6 intervening years, there has been some ‘churn’ experienced. In total 21 shops have closed while 18 shops have opened. A further 8 shops have changed ownership. During the same period 3 betting operators have ‘lost’ a presence in Southwark while 2 new operators have moved into the market.

Betting operators entitlement to gaming machines

4. Beside the ability to provide ‘across the counter’ betting, betting premises operators also have an entitlement to 4 gaming machines of categories B2 to D (except B3A machines) per premises.
5. Of these, B2 machines, also known as ‘FOBTs’ (fixed odds betting terminals) have a maximum stake of £100 (in multiples of £10) and a maximum prize of £500. The ability to play casino style games in a non-casino type environment is attractive to customers. The contribution made toward overall betting office profitability by these machines provides an incentive to maximise this potential profit stream.

The Gambling Act 2005

6. Under the Gambling Act 2005, any person wishing to run a betting shop will have to obtain an operating licence and one or more personal management licences from the gambling commission, plus a premises licence from the local licensing authority for the area in which the premises is wholly or partly situated.
7. Each licensing authority has a duty to consider and determine every relevant application for a premises licence made to it.

Principles to be applied by the licensing authority when determining premises licence applications under the Act

8. Section 153 of the Act states that ‘in exercising their functions under this part (of the Act) 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 issued by the Gambling Commission (www.gamblingcommission.gov.uk);

- (b) In accordance with any relevant guidance issued by the Gambling Commission (www.gamblingcommission.gov.uk);
 - (c) Reasonably consistent with the licensing objectives (subject to (a) and (b) above; and
 - (d) In accordance with Southwark's statement of gambling licensing policy (subject to (a) to (c) above).'
9. The licensing objectives referenced in 4(c) above are:
- (a) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - (b) Ensuring that gambling is conducted in a fair and open way; and
 - (c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.
10. The rules of natural justice require that each application for a licence must be considered upon its own merits with all relevant matters taken into account.
11. A licensing authority may not have regard to:
- The expected demand for the facilities; or
 - Whether or not the applicant's proposal is likely to receive planning or buildings consent.
12. Neither the governing legislation or the guidance provided to licensing authorities by the Gambling Commission make any provision for an authority to consider the cumulative impact of licensed premises (as per the Licensing Act 2003).
13. Together this provides for very directed and restricted consideration of applications for premises licences, focussed on the relative merits of the specific application under consideration. Greater reliance is placed, therefore on the planning process to take in broader social and economic considerations. However, planning considerations are also restricted.

Planning Powers

14. Boroughs have planning powers to control the uses of the high street shops through the Use Class Order. However, permitted development rights limit boroughs' powers in key respects.
15. Under the Use Classes Order¹, betting shops fall within the A2 use class. The A2 use class also includes banks, building societies, bureau de change, professional services, estate agents and employment agencies. Changes between uses in the A2 use class do not require planning permission.
16. In addition, the General Permitted Development Order allows a change of use from restaurants and cafes (Use Class A3), drinking establishments (Use Class A4) and hot food takeaways (Use Class A5) to a use in the A2 use class without requiring planning permission.
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17. Through this combination, new betting shops may readily be established in a broad range of high street shops without any additional planning consent being necessary.
18. The Mary Portas Review (2011) into the future of the UK's high streets included a recommendation to place betting shops into a separate use class category (i.e. 'sui generis'). The government's response to the Mary Portas Review 'High Streets in the Heart of our Communities' highlighted Article 4 Directions as the appropriate tool for certain uses such as betting shops, by removing permitted development rights, and requiring a planning application to be made.
19. In reality, however, Article 4 Directions are viewed as inappropriate and cumbersome tools for a range of reasons. Among these are that Article 4 Direction does not affect changes within the A2 use class itself; Article 4 Direction, if applied to changes to A2 Use Class, would affect broader than just betting shops; and to avoid potential compensation claims under Article 4 Directions the council would need to provide 12 months advance notice of an Article 4 Direction taking effect.
20. This authority is aware of a number of local authorities that have made or are making approaches to central government concerning the legal position around planning and licensing controls over betting shops and of a number of planning initiatives that are taking place. Two current licensing matters of particular note are noted below.

Newham decision based on primary activity requirement

21. In February 2013, Newham Council has become the first council in the country to use the 'primary activity' of a betting shop in their decision to reject a licence application. The concept of primary activity is established by the guidance for local licensing authorities provided by the Gambling Commission. This sets out that the primary activity of the premises should be that described by way of its licence.
22. Newham Council rejected an application by the owners of the Paddy Power betting chain to open new premises at 297 Green Street, under section 153 Gambling Act 2005. The council believed the premises would add to the 'cluster' of betting shops that already operate on the street. Members decided the application did not meet the criteria for a betting shop licence as the premises would not be primarily used for betting and that the purpose of the application was to increase the number of Fixed Odds Betting Terminals (FOBTs) in the street rather than enable traditional betting. Paddy Power is now pursuing a legal challenge against the refusal.

Pan-London Working Group

23. It is also worth noting that there is a pan-London group examining different ways of addressing local concerns regarding betting shops. Southwark is an active member of this group and is working alongside a number of other London boroughs to explore the development of a Cumulative Impact Policy for betting shops; investigating the implications of planning policy controls (through Supplementary Planning Document and Article 4 direction) and understanding the implications of decisions to refuse betting premises licences.