

**LICENSING ACT 2003
SUB COMMITTEE**

18 FEBRUARY 2016

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

GAMBLING ACT 2005: APPLICATION FOR AN ADULT GAMING CENTRE PREMISES LICENCE IN RESPECT OF PALACE AMUSEMENTS, 59 WEEK STREET, MAIDSTONE, ME14 1QU

Final Decision-Maker	Licensing Act 2003 Sub Committee
Head of Service	John Littlemore
Lead Officer and Report Author	Lorraine Neale
Classification	Non-exempt
Wards affected	High Street

This report makes the following recommendations to the final decision-maker:

1. That the Licensing Act 2003 Sub-Committee consider whether to grant, refuse or modify this application for an Adult Gaming Centre Premises Licence.

This report relates to the following corporate priorities:

- Great People
- Great Place
- Great Opportunity

Timetable

<i>Meeting</i>	<i>Date</i>
Policy and Resources Committee	N/A
Council	N/A
Other Committee	N/A

GAMBLING ACT 2005: APPLICATION FOR AN ADULT GAMING CENTRE PREMISES LICENCE IN RESPECT OF PALACE AMUSEMENTS, 59 WEEK STREET, MAIDSTONE, ME14 1QU

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1 To advise Members of an application made under section 159 of the Gambling Act 2005 for the grant of an Adult Gaming Centre for Palace Amusements, 59 Week Street, Maidstone, ME14 1QU

2. INTRODUCTION AND BACKGROUND

2.1 The Gambling Act 2005 received royal assent on 7th April 2005 and came fully into force on 1st September 2007. It repeals the Betting Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusement Act 1976.

The Act comprehensively updates gambling laws that were several decades old, providing new powers and protections for both new and old forms of gambling and transfers responsibility for granting gaming and betting permissions from the Courts to Local Authorities and the Gambling Commission. Local Authorities have five functions; publication of policy; regulation of premises; registration of small society lotteries; maintenance of registers; and compliance.

The Act has three clear 'Licensing Objectives', namely:

- 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.

The licensing objectives are the only matters that the licensing authority can take into account when making a decision.

The Act covers two main activities:

- Providing facilities for gaming
- Using premises for gaming

In either case appropriate permission must be held which may come in the form of a Licence, Permit or Registration determined according to the Act or from an exemption given by the Act.

2.2 In exercising its functions under Part 8 of the Gambling Act 2005 the Licensing Authority shall aim to permit the use of the premises licence in so far as the Authority think it is:

In accordance with any relevant code of practice issued by the Gambling Commission under section 24 of the 2005 Act;

In accordance with any relevant guidance issued by the Gambling Commission under section 25 of the 2005 Act;

Reasonably consistent with the licensing objectives;

In accordance with the Licensing Authority's Statement of Principles;

In determining whether to grant a premises licence a licensing authority may not

Information in relation to the licensing objectives is set out at S5.1 of the Gambling Commissions Guidance to Local Authorities 5th Edition (GC's Guidance) which came into force in September 2015 and pages 22-23 of MBC's Statement of Licensing Principles (SoLP) attached as Appendix P. This is the SoLP that was in place when this application was received and that is referred to. However a new SoLP was agreed on 8.12.2015 which is also attached as Appendix P1, it should be noted that there is no significant change between the old and the new SoLP and it is for the parties to address the Committee on which SoLP to apply.

2.3 Application

An application has been received from Rotunda Equipment Leasing Ltd of Rotunda House, Unit H, Concept Court, Folkestone, CT19 4RH on 8 October 2015 (Appendix A).

An Adult Gaming Centre is for persons over 18 years old and can contain a maximum of 20% of the total number of gaming machines which are available for use on the premises as category B3 with a maximum payout of £500 or B4 machines with a maximum payout of £400 and an unlimited number of category C machines with a maximum payment £100 and D machines with a maximum payout of £5.

A location plan is attached as Appendix B and a plan of the premises is attached as Appendix C to show the layout and the area of licensable activity.

2.4 Notice

The Act requires the applicant to advertise the application at the premises and in a local newspaper. A copy of the notice of application was displayed at the premises and in the Kent Messenger on the 16.10.15 (Appendix D) and within the timescale required. A notice is also required to be served on the responsible authorities and this was confirmed as taken place. The Local Authority also notified the Responsible Authorities on 16 October 2015 that an application had been received from Rotunda Equipment

Leasing Ltd. The last day to receive representations in respect of this application was the 5 November 2015.

2.5 Representations

a) Responsible Authorities

The Gambling Commission – no response
Maidstone Constabulary – no response
Kent Fire & Rescue Service – no response
Planning – no response
Environmental Health – no response
Kent Social Services – no response
HM Revenue & Customs – no response

b) Interested Parties

One representation was received on 3 November 2015 from Cashino Gaming Ltd, an interested party and is attached as Appendix E. This is in relation to a company with a business interest being an Adult Gaming Centre at 74 Week Street.

A further letter was received from Cashino Gaming Ltd on 6 November 2015 and is attached as Appendix F. The letter asks that the Local Authority consider the “central point” of the matters raised by them in their letter of 3 November 2015 and that is, that the application has not been made correctly and is summarised in the following paragraph of their letter.

“In this case, it is not just the plan that is deficient – the entire application is unspecific to the point of being misleading. It will not therefore be enough to ask for more information. In our submission, the application should be refused or rejected so that if it is then resubmitted with the appropriate level of detail, the LA, Responsible Authorities, and Interested Parties may properly evaluate and comment on it.”

2.6 Applicants response to Cashino’s representation

The applicant was furnished with Cashino’s Ltd representation made on 3 November 2015 and their further comments invited. The applicant’s solicitor responded on 12 November 2015 (Appendix G). The general overview of the response was that the representation was “frivolous and vexatious” and it should be dismissed and an attempt to avoid commercial competition. It was also sought that the licence be granted without a hearing.

Consideration of the representation from Cashino

When considering the representation received on 3 November 2015 from Cashino, the Local Authority took the view that it had insufficient information to determine the admissibility and relevance of the interested parties representation and wrote to the interested party on 25 November 2015 (Appendix H). The letter stating that they had declared to have *business*

interest in [the] catchment area that might be affected but that their representation did not explain how their business interest might be affected. They were asked to furnish the further information in order to determine whether a hearing would be required.

When considering the further letter received on 6 November 2015 the Legal Department sent a letter to the objector (Appendix I) which requested that they explain further “in what way and to what extent the applicant had failed to comply with the procedural requirements of the Act and the regulations made thereunder”

2.7 Request from the applicant for further information

A letter was also sent to the applicant on 25 November 2015 (Appendix J) stating that there were some concerns that the plan submitted with the application was insufficient and that that it failed to sufficiently specify the location and extent of any part of the premises in which the gaming machines would be made available (see Reg 4(6) of the GA05 (Premises Licence and Provisional Statements) Regulations 2007 (SI 2007/459)) and asked them to submit supporting documentation to demonstrate that their application and proposed operation of these premises at this particular location were to be in accordance with the LCCP, the GC’s Guidance, consistent with the licensing objectives under the Act and in accordance with the Maidstone SoLP.

2.8 Responses to the requests for further information

a) Objector

The responses to the licensing and legal department letters of 25 November 2015 to Cashino Ltd were received on 8 December 2015 and are attached as Appendix K and Appendix L.

b) Applicant

The responses to the letter sent on 25 November 2015 to the applicant (Appendix J) were received on 8 December 2015 and is attached as Appendix M.

3. AVAILABLE OPTIONS

3.1 The Sub-Committee can

- i) Grant the application
- ii) Grant the application and attach conditions.

iii) Refuse the application

Mandatory conditions may not be excluded. Adult Gaming Centres do not have Default conditions Conditions may apply to the whole or part of premises. Members may accept conditions put forward by the applicant and/or the licensing officer, or amend them as justified in the circumstances. It is important that any conditions are clear and precise so they may be enforced. A condition may not be attached which would prevent compliance with a condition on the operating licence granted by the Gambling Commission. Mandatory conditions vary according to the type of application before the Sub-Committee those applicable to this application are attached at Appendix O.

This application will be determined using the principles to be applied under section 153 of the Gambling Act 2005

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

Officers considered the admissibility and relevance of the interested Party's representation made by Cashino a competing Adult Gaming Centre operator constituted exceptional circumstances. Also the scheme of delegation at Appendix 5 of the SoLP that states "where representations have been received and not withdrawn the matter is to be determined by the licensing sub-committee"

5. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Any decision taken with regard to this matter will not in itself have any significant effect on the Corporate Objectives	[Head of Service or Manager]
Risk Management	The determination is subject to rights of appeal by both parties, which may have costs implications for the Council.	[Head of Service or Manager]
Financial	The appropriate application fee has been paid in accordance with the Council's fees and charges. There are no financial implications other than possible costs if an appeal against the decision is successful.	[Section 151 Officer & Finance Team]
Staffing	There are none	[Head of

		Service]
Legal	Considerations are as set out in the report.	[Legal Team]
Equality Impact Needs Assessment	<p>The Equality Act 2010, Section 149 requires public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity between the sexes and foster good relations between them. Consideration of this may inform Conditions. This duty also covers religious belief and disability.</p> <p>An assessment was made at the time at the time of the adoption of the Policy.</p>	[Policy & Information Manager]
Environmental/Sustainable Development	There are none	[Head of Service or Manager]
Community Safety	Section 17 of the Crime and Disorder Act 1998 gives authorities a duty to have regard to the likely effect of the exercise of their functions on the need to do all they reasonably can to prevent, crime and disorder.	[Head of Service or Manager]
Human Rights Act	<p>The Human Rights Act 1998 should be taken into consideration when reaching a decision. The rights potentially engaged are:-</p> <p>Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights. The Committee must carefully consider the applicant's rights and these must be balanced against the public interest</p>	[Head of Service or Manager]
Procurement	N/A	[Head of Service & Section 151 Officer]

Asset Management	N/A	[Head of Service & Manager]
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6. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A - Application
- Appendix B – Plan of the Area
- Appendix C – Premises plan
- Appendix D – Application Advert
- Appendix E – Cashino representation 3.11.15
- Appendix F – Cashino Letter 6.11.15
- Appendix G – Applicant’s response to Cashino representation 3.11.15
- Appendix H – Licensing letter requesting additional info from Cashino
- Appendix I – Legal dept letter requesting additional info from Cashino
- Appendix J - Licensing letter requesting additional info from applicant
- Appendix K – Cashinos response to Licensing letter
- Appendix L – Cashinos response to Legal letter
- Appendix M –Applicants response to Licensing letter
- Appendix N – attachment to applicants letter -Bacta Toolkit supplied
- Appendix O - Mandatory conditions in respect of Adult Gaming Centres
- Appendix P – Maidstones SoLP Exp Jan 2016
- Appendix P1 – Maidstones SoLP Exp Jan 2021(agreed 8.12.15)

N.B. Both SoLP’s have been attached to the report as Appendix P was in place when the application was received and P1 is in place now, however there has been no significant change between them only minor amendments

7. BACKGROUND PAPERS

Gambling Act 2005 <http://www.legislation.gov.uk/ukpga/2005/19/contents>

Gambling Act 2005 (Premises Licence and Provisional Statements)

Regulations 2007 (SI 2007/459).

<http://www.legislation.gov.uk/uksi/2007/459/part/1/made>

Gambling Commission Guidance to licensing authorities (5th Edn)

<http://www.gamblingcommission.gov.uk/pdf/GLA/GLA.pdf>

Licence conditions and codes of practice (LCCP)

<http://www.gamblingcommission.gov.uk/pdf/Latest-LCCP-and-Extracts/Licence-conditions-and-codes-of-practice.pdf>