

APPENDIX L

From: David H Biesterfield [dbiesterfield@btinternet.com]
Sent: 08 December 2015 12:55
To: Robin Harris
Cc: Lorraine Neale
Subject: Re: Letter re Judicial Review

Dear Mr Harris,

I have now been able to take instructions on your letter of 25th November. May I please ask you to re-read my client's representation of 5th November which I suggest contains the information you have requested in your above letter. However, to further assist, the approach I invite the Council to take follows the statutory and regulatory chain (unless otherwise stated, I use the same defined terms as those used in the original representation):

1 The Act is the starting point & specifically (I cover, below, only those provisions applicable up to the hearing of an application):

- S1: which sets out the Licensing Objectives. As you will readily accept, these underpin the entire statutory & regulatory scheme;
- SS20 & 22: which respectively establish the GC & its duty to promote the Licensing Objectives. The duty of the GC to permit gambling is qualified by the GC's obligation to ensure that such gambling is "consistent with the pursuit of the licensing objectives";
- SS23 & 24: which, respectively, require the GC to prepare a statement of principles for licensing & regulation codes of practice (N.B. in considering the LCCP, it is important to recognise the difference between the codes, the provisions of which do not, of themselves, make a person in breach of a provision liable to criminal or civil proceedings, and the conditions which do. The latter, by extension, include the social responsibility provisions of the codes);
- S25: which provides for the GC's Guidance (now, in its 5th edition). S25(2) requires the licensing authority to have regard to the guidance. Thus, your Council is not absolutely required to follow the GC's Guidance but, I am sure, would expect to have good reasons not to. Please see, also, the next bullet point & let me know if & the full reasons why Maidstone might, in this instance, take that decision;
- S153: which sets out the principles to be followed by your Council in exercising its functions (including its consideration of the current application). Inter alia, it must be satisfied that the use of the premises in question will be (a) "in accordance with any relevant code of practice..."; (b) "in accordance with any relevant guidance issued by the Commission..."; & (c) reasonably consistent with the licensing objectives (subject to (a) & (b))". That means that the requirements of (a) & (b) must first be

considered & the licensing authority's satisfaction in terms of compliance with them be established before consideration of (c). Of course, the licensing authority's required "aim to permit" is qualified by it being required to consider every application against the provisions of S153 (a)-(d), inclusive;

- S154: which deals with delegation - I draw attention to S154 (4)(a);
- SS157 & 158: which define Relevant Authorities & Interested Parties. I mention these provisions, & in passing S160 (notices), only as a reminder of the central role of these various parties in the statutory licensing framework. In further passing, it is noteworthy that the test of "business interests that might be affected by authorised activities" does not exclude those of business's with which new, proposed premises will compete (see also para 426 off the Explanatory Notes). Indeed, paras 8.14 & 8.15 of the GC's Guidance are, in effect, explicit that ownership of a business like that of my client in Week Street will make that owner an Interested Party. As my client's representation makes clear, its objection is not based on demand but on the principle that competitors should not be entitled to a licence unless the process leading to its grant satisfies the statutory & regulatory requirements of the overall scheme, as I am presently describing it, & decisions made under it;
- S159 (specifically referred to in your letter): which prescribes the pre-requisites of a *valid* application. It deals with validity, not whether a valid application should be granted. To be clear, my client does not currently suggest that the application is invalid (although its position remains reserved on that point should an irregularity appear) – only that, in its present state lacking as it does the necessary information to which my client's representation refers, it should not be granted. In short, the applicant has, as you put it, "failed to comply with the procedural requirements of the Act and the regulations made thereunder" not in having lodged an invalid application but in having failed to supply the requisite information without which the licensing authority cannot discharge its licensing function as outlined above. Given the role that the Act gives to Responsible Authorities & Interested Parties, it would plainly be wrong on procedural & natural justice grounds for any such information not to be shared with them with sufficient time for them to consider & respond to it. I hope that answers the specific question contained in your letter;
- S161: which sets out the requirements for representations;
- S162: which establishes the need for a hearing in this case. I do not think that you or Ms Neale suggest that my client's representation is either vexatious, frivolous or "will certainly not influence..." determination of the application. To reach any such view would

plainly carry a heavy onus. If such a suggestion is being made, please confirm that to be the case & explain the reasoning behind it;

2 The Act is supported by the Gambling Act (Premises Licences and Provisional Statements) Regulations 2007 but nothing additional turns on them at this stage. My client's representation deals with the issue of the plan lodged in support of the application;

3 It is also appropriate to refer to para 6(j) of The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 which requires the licensing authority to specify, in its notice of hearing, "...the matters, if any, on which the relevant committee considers at the time that it will want clarification at the hearing from a party". If the validation prerequisites were all that was required for the grant rather than the validation of an application, that provision would be otiose. I suggest that the matters to be referred to in this case are those detailed in my client's representation.

I have replied separately to Ms Neale's letter but suggest that both responses be read together as they overlap.

I look forward to hearing from you.

Yours sincerely,

David Biesterfeld

Consultant to Cashino Gaming Limited