

MAIDSTONE BOROUGH COUNCIL

LICENSING SUB COMMITTEE

18TH MAY 2012

REPORT OF THE HEAD OF DEMOCRATIC SERVICES

Report prepared by Lorraine Neale

2. GAMBLING ACT 2005 – APPLICATION FOR A NEW BETTING PREMISES LICENCE – FOR PADDY POWER, 9 GABRIELS HILL, MAIDSTONE, ME15 6HL

1.1 Issue for Decision

- 2.1.1 If it has been agreed to not hold a hearing, to determine the application made by Power Leisure Bookmakers Ltd, 9 Gabriels Hill, Maidstone, ME15 6HL under the Gambling Act 2005 for a new betting premises licence the Sub Committee should continue as a meeting to determine the application

1.2 Reason for Urgency

- 1.2.1 Representations for this application ended on 10 May 2012 and a decision is required as soon as reasonably practicable in order to determine the licence in accordance with the Gambling Act 2005.

1.3 Recommendation of the Head of Democratic Services

- 2.3.1 That the application for a betting premises licence for 9 Gabriels Hill by Paddy Power be granted.

1.4 Reasons for Recommendation

- 2.4.1 The period for representations is now expired and apart from Mr Martin's letter no further representations of any interested party or responsible authority were received. It has been decided that the representation "will certainly not influence the authority's determination" under S162 (3)(c) and a hearing was dispensed with.
- 2.4.2 The application was made on 13 April 2012 by Power Leisure Bookmakers Ltd for a new Betting premises licence for Paddy Power, 9 Gabriels Hill, Maidstone, ME15 6HL. The premises do not have the benefit of any other licences under the Gambling Act 2005.
- 2.4.3 A copy of the application form is attached as Appendix A. The applicant has not asked for the statutory default condition concerning the times of operation to be removed (part 4 of the application form) and therefore the national default times of operation of 7am to 10pm on each day of the week are applicable.

- 2.4.4 The applicant submitted with the application form a copy of the Licensing objectives and how Paddy Power approach them. These are attached as Appendix B.
- 2.4.5 Copies of the premises plans are attached as Appendix C. The applicant submitted a licence plan and a plan showing the indicative layout of the premises with the application. A plan of the area is also attached as Appendix D.
- 2.4.6 The application has been advertised in accordance with the provisions of the Act (i.e. by a premises notice and local newspaper notice). The newspaper advert appeared in the KM on 20 April 2012 and is attached as Appendix E.
- 2.4.7 The premises are presently an unoccupied Public House with a licence under the Licensing Act 2003 for the sale of alcohol and provision of regulated entertainment. It is intended to split the premises into 2 separate parts. The basement and ground floor being a Betting Office under the applicant's control and the other part under the control of other persons. There will be no direct access between the two parts.
- 2.4.8 the licensing objectives are:
- (i) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
 - (ii) Ensuring that gambling is conducted in a fair and open way
 - (iii) Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 2.4.9 In determining any application for the use of premises for gambling the Licensing Authority will apply the principles under S153 Gambling Act 2005 which are:
- (1) In exercising their functions under this Part a licensing authority SHALL aim to permit the use of premises for gambling in so far as the authority think it—
 - (a) in accordance with any relevant code of practice under section 24, (Appendix B agenda item 4)
 - (b) in accordance with any relevant guidance issued by the Commission under section 25, (Appendix C agenda item 4)
 - (c) reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b)), and
 - (d) in accordance with the statement published by the authority under section 349 (subject to paragraphs (a) to (c)).(Appendix D agenda item 4)
 - (2) In determining whether to grant a premises licence a licensing authority may not have regard to the expected demand for the facilities which it is proposed to provide.

On determining an application for a premises licence (whether at a hearing or not) an authority SHALL grant it or reject it.

- 2.4.10 The Guidance at (1.19) takes a strict view,

"a licensing authority has no discretion in exercising its functions under Part 8 of the Act to grant a premises licence where that would mean

taking a course which it did not think accorded with the Guidance contained in this document, any Commission Code of Practice or the Licensing Authority Statement of Policy or be consistent with the licensing objectives. In reaching a view that a grant would be in accordance with such Guidance, Code of Practice or Licensing Authority Statement of policy a licensing authority is of course, as any public authority decision maker, obliged to act fairly and rationally”.

There is always the ability to depart from guidance for strong and defensible reasons but it is difficult to see what these would be if all the s153 principles were met and considered with the aim to permit.

2.4.11 It does not appear that anything raised in the representation expresses the view that the application would not be in accord with the Code of Practice (report item 1.4.5.(a)) and there is not indication that it is.

2.4.12 Nothing (including the representation) indicates the application would not accord with Guidance. (report item 1.4.5.(b)). Gambling Commission Guidance reminds authorities that public nuisance is not a licensing objective for gambling, “In considering applications, licensing authorities in England and Wales should take particular care to bear in mind that these objectives are not the same as those in the Licensing Act 2003. In particular, they do not include considerations in relation to public safety or prevention of public nuisance. The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling.”(5.2), and that moral and ethical objections to gambling are not a valid reason to reject an application, (5.28), This goes on to state that a decision cannot be based on dislike of gambling or a general notion that it is undesirable to allow gambling premises in an area. Guidance also sets out examples of representations not likely to be relevant (7.53) e.g. “that there are already too many gambling premises in the locality (although it may be relevant if it points, as a result, to rising problems in crime, disorder, underage gambling or problem gambling)”. The representation does not appear to suggest that the grant of a premises licence would lead to crime and disorder. The reporting of possible drug transactions does not refer to any link with betting premises. There are no Police representations relating to crime and disorder in the area.

2.4.13 The content of the representation does not suggest that a grant of the premises licence application would be contrary to the licensing objectives, (see 2.4.8)

There is no indication that the proposed use would not accord with the authority’s own Statement of Principles. (report item 1.4.5 (c))

2.4.14 If granted the Premises Licence will be subject to the mandatory conditions and default conditions(pursuant to sections 167 and 168 of the Act) (appendix F)

2.4.15 On the basis that the one representation received was considered at this meeting and considered not to raise matters relevant to this decision and a hearing being dispensed with under s162 (3)(c) of the Gambling Act

2005. Having regard to the principles in S153 as set out the application is considered in accordance with the Code of practice, relevant guidance, reasonably consistent with the Licensing Objectives and in accordance with the Licensing Authorities Statement of Principles together with the duty to aim to permit the use of premises for gambling. It is the recommendation of Officers that the licence be granted

1.5 Alternative Action and why not Recommended

1.5.1 The application could be rejected but there are no apparent grounds on which to do so under the Gambling Act 2005.

1.6 Impact on Corporate Objectives

2.6.1 Any decision taken with regard to this matter will not in itself have any significant effect on the Corporate Objectives.

1.7 Risk Management

2.7.1 The determination is subject to rights of appeal by both parties, which may have costs implications for the Council.

1.8 Other Implications

1. Financial	X
2. Staffing	
3. Legal	X
4. Equality Impact Needs Assessment	X
5. Environmental/Sustainable Development	
6. Community Safety	X
7. Human Rights Act	X
8. Procurement	
9. Asset Management	

2.8.1 Financial - The appropriate application fee has been paid in accordance with the Council's fees and charges.

2.8.2 Legal -Considerations are as set out in the report.

2.8.3 Equality Impact Assessment - 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. An assessment was made at the time of the adoption of the Policy.

2.8.4 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.

2.8.5 Human Rights - The Human Rights Act 1998 should be taken into consideration when reaching a decision. The rights potentially engaged are:-

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.

1.9 Relevant Documents

Appendix A Application Form
Appendix B Paddy Powers objectives
Appendix C premises plans
Appendix D plan of the area
Appendix E newspaper advert
Appendix F Mandatory and Default Licence Conditions

IS THIS A KEY DECISION REPORT?

Yes

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No

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If yes, when did it first appear in the Forward Plan?

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This is a Key Decision because:

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Wards/Parishes affected:

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