



Committee report

Committee	LICENSING SUB COMMITTEE
Date	MONDAY 1 JUNE 2020
Title	TO DETERMINE AN APPLICATION FOR AN ADULT GAMING CENTRE PREMISES LICENCE UNDER SECTION 159 OF THE GAMBLING ACT 2005 FOR HARBOURLIGHT AMUSEMENTS, PETER PAN'S FUNFAIR AND AMUSEMENTS, ESPLANADE, RYDE, ISLE OF WIGHT, PO33 1AJ
Report of	COLIN ROWLAND DIRECTOR OF NEIGHBOURHOODS

BACKGROUND

1. An application for an Adult Gaming Centre Premises Licence was received on 7 February 2020 for Harboursight Amusements, Peter Pan's Funfair and Amusements, The Esplanade, Ryde, Isle of Wight, PO33 1AJ.
2. The full application including the proposed plans can be found at Appendix A.
3. There is currently a Family Entertainment Centre permit in place for these premises, which authorises an unlimited number of Category D machines.
4. This application seeks to license a separate Adult Gaming Centre premises within the same building, as shown in the plan accompanying the application.
5. An Adult Gaming Centre Premises Licence authorises an unlimited number of Category C or D gaming machines and a limited number of Category B3 or B4 gaming machines (up to 20% of the total number of gaming machines which are available for use).
6. The table below details the current maximum stakes and prizes for the categories of gaming machines:

Category of machine	Maximum stake (from April 2019)	Maximum prize (from Jan 2014)
B3	£2	£500
B4	£2	£400

C	£1	£100
D – non-money prize	30p	£8
D – non-money prize (crane grab machines only)	£1	£50
D – money prize	10p	£5
D – combined money and non-money prize	10p	£8 (of which no more than £5 may be a money prize)
D – combined money and non-money prize (coin pusher or penny falls machines only)	20p	£20 (of which no more than £10 may be a money prize)

7. Those aged under 18 years old are not permitted access to Adult Gaming Centre premises.

CONSULTATION

8. The Gambling Act 2005 Regulations prescribe a consultation period of twenty-eight days, commencing the day the application was made to the authority.
9. Regulations also require that notice of the application is given to the Responsible Authorities, as defined by the Act, and that a notice appears in a local newspaper and is displayed prominently at the premises.
10. The consultation period ended on the 9 March 2020 as this is the date specified in these notices by the applicant.
11. The outcome of the consultation in respect of this application is summarised below:

Responsible Authorities

Licensing Authority	No Representation made
Gambling Commission	No Representation made
Police	No Representation made
Fire and Rescue Service	No Representation made
Planning Services	No Representation made
Environmental Health	No Representation made
Children's Services	No Representation made
HMRC	No Representation made

Interested Parties

12. 9 representations have been received objecting to this application.
13. The main areas of concern are that:
 - The premises are situated within a funfair/playground; it is believed this will encourage children to seek access and/or participate in gambling
 - The premises are situated in Ryde, which has areas of high deprivation; People who live here may be considered 'vulnerable persons' who could be harmed/exploited by gambling activities
 - There could be an increase in crime and disorder in the area as it would encourage those who engage in antisocial behaviour to the area
 - Licensing the premises will harm the regeneration plans within Ryde
14. The full representations can be found at Appendix B.

FINANCIAL/BUDGET IMPLICATIONS

15. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

LEGAL IMPLICATIONS

16. The consultation period ended on 9 March 2020. Section 4 of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 states that a hearing is to be commenced as soon as is reasonably practicable after the consultation period.
17. Section 153 of the Gambling Act 2005 states that:
In exercising their functions under this Part a licensing authority shall aim to permit the use of premises for gambling in so far as they think it is:
 - a. in accordance with any relevant code of practice under s.24
 - b. in accordance with any relevant guidance issued by the Commission under s.25
 - c. reasonably consistent with the licensing objectives (subject to a and b above)
 - d. in accordance with the licensing authority's statement of licensing policy (subject to a to c above).

Statutory National Guidance

18. The Gambling Commission issue statutory national guidance to licensing authorities under section 25 of the Gambling Act 2005. The following paragraphs are considered relevant to this application:

5.1 In exercising their functions under the Act, particularly in relation to premises licences, temporary use notices and some permits, licensing authorities must have regard to the licensing objectives set out in s.1 of the Act, 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
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

19. **Objective 3: Protecting children and other vulnerable persons from being harmed or exploited by gambling**

5.13 In exercising their powers under s.153, licensing authorities should consider whether staff will be able to adequately supervise the gambling premises, as adequate staffing levels is a factor to consider regarding the prevention of underage gambling. The Commission would expect the operator and the licensing authority to work together to consider how any impediments to the supervision of premises might be most appropriately remedied. Supervision also applies to premises that are themselves not age-restricted (e.g. bingo and family entertainment centre (FEC) premises) but which make gambling products and facilities available.

5.14 Where a licensing authority considers the structure or layout of premises to be an inhibition or potential inhibition to satisfying this licensing objective, the licensee should consider what changes are required to ensure the risk is mitigated. Such changes might include the positioning of staff or CCTV, the use of floor-walkers and the relocation of the staff counter to enable direct line of sight. Licensing authorities will need to consider the proportionality of changes to the physical layout in relation to other measures that could be put in place.

5.17 The Act does not seek to prohibit particular groups of adults from gambling in the same way that it prohibits children. The Commission does not seek to define ‘vulnerable persons’ but it does, for regulatory purposes, assume that this group includes people who gamble more than they want to, people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance misuse relating to alcohol or drugs.

5.18 Licensing authorities need to consider, in relation to particular premises, whether any special considerations apply in relation to the protection of vulnerable persons. This could be a local risk that is reflected in the licensing authority’s statement of policy. Any such considerations need to be balanced against the authority’s objective to aim to permit the use of premises for gambling.

5.20 Whilst there is a presumption in favour of permitting the relevant premises to be used for gambling, the licensing authority may not do so unless satisfied that such use would be in accordance with this Guidance, any relevant Commission code of practice, its own statement of policy, and the licensing objectives.

5.21 In the unlikely event that a licensing authority perceives a conflict between a provision of a Commission code of practice or this Guidance, and its own statement of policy or view as to the application of the licensing objectives, the structure of s.153 makes it clear that the Commission's codes and this Guidance take precedence.

5.31 Licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through the use of conditions.

5.32 In determining applications for premises licences and permits, a licensing authority may request as much information as it requires to satisfy itself that all the requirements set out at s.153 of the Act are met.

5.34 Licensing authorities should be aware that other considerations such as moral or ethical objections to gambling are not a valid reason to reject applications for premises licences. In deciding to reject an application, a licensing authority should rely on reasons that demonstrate that the licensing objectives are not being, or are unlikely to be, met, and such objections do not relate to the licensing objectives. An authority's decision cannot be based on dislike of gambling, or a general notion that it is undesirable to allow gambling premises in an area (with the exception of the casino resolution powers).

20. Access to gambling by children and young people

7.24 The Act contains the objective of 'protecting children and other vulnerable persons from being harmed or exploited by gambling' and sets out offences at s.46 and s.47 of inviting, causing or permitting a child or young person to gamble, or to enter certain gambling premises. Children are defined in the Act as under-16s and young persons as 16-17 year olds. An adult is defined as 18 and over.

7.26 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. The plan of the premises should clearly denote entrances and exits.

7.28 Products made available for use in gambling premises will often contain imagery that might be of particular appeal to children or young people. For example, cartoon imagery that is ubiquitous on gaming machine livery. Where any such product is sited on age restricted premises or in the age-restricted area of premises (and in particular, if sited close to the entrance or threshold and therefore visible to children or young people), licensees should consider whether it might risk inviting under 18s to enter the restricted area.

7.29 The LCCP requires licensees to ensure that their policies and procedures for preventing underage gambling take account of the structure and layout of

their gambling premises. This therefore requires licensees not only to be able to supervise their premises but also that they should mitigate the risks of under 18s being attracted to enter premises by the products available within them. Where a licensing authority has concerns that such products are visible, they could for example require the licensee to re-site the products out of view.

21. **Licence Conditions**

9.21 Licensing authorities should note that mandatory conditions made under these regulations are set with the intention that no further regulation in relation to that matter is required. Therefore, it is extremely unlikely that licensing authorities will need to impose individual conditions in relation to matters that are already dealt with by mandatory conditions. Licensing authorities should only consider doing so where there are regulatory concerns of an exceptional nature, and any additional licence conditions must relate to the licensing objectives.

9.30 Where there are risks associated with a specific premises or class of premises, the licensing authority may consider it necessary to attach conditions to the licence to address those risks, taking account of the local circumstances.

9.31 Conditions imposed by the licensing authority must be proportionate to the circumstances which they are seeking to address. In particular, licensing authorities should ensure that the premises licence conditions are:

- relevant to the need to make the proposed building suitable as a gambling facility
- directly related to the premises (including the locality and any identified local risks) and the type of licence applied for
- fairly and reasonably related to the scale and type of premises
- reasonable in all other respects.

Implications under the Crime and Disorder Act 1998

22. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights

23. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
24. There are three convention rights, which need to be considered in this context:

Article 8 - Right to Respect for Private and Family Life

Everyone has the right to respect for his private and family life, his home and his correspondence. In the case of article 8 there shall be no interference by a public authority with the exercise of this right except as such in accordance with the law and is necessary on a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Article 1 - First Protocol Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that “no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties”.

Local Policy

25. It is considered that the following paragraphs from the Licensing Authority's Gambling Act 2005 Statement of Licensing Principles 2019 – 2022 have a bearing upon the application. Members' attention in respect of this application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Consultation	N/A
Paragraph 3	Publication and Review	N/A
Paragraph 4	Licensing Authority Functions	4.3 – 4.4
Paragraph 5	Licensing Objectives	5.3 – 5.4, 5.9 – 5.15
Paragraph 6	Responsible Authorities and Interested Parties	6.3 – 6.7
Paragraph 7	Fundamental Principles	All
Paragraph 8	Integration of Strategies and Other Legislation	All
Paragraph 9	Applications	9.3 – 9.7
Paragraph 10	Premises Licences	10.2
Paragraph 11	Permits, Temporary and Occasional Use Notices	N/A
Paragraph 12	Compliance and Enforcement	N/A

EQUALITY AND DIVERSITY

26. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation, all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).
27. There is no requirement for an equality impact assessment to be carried out regarding this decision.

OPTIONS

- Option 1: To grant the application for a premises licence
- Option 2: To grant the application for a premises licence with additional conditions
- Option 3: To reject the application for a premises licence

RISK MANAGEMENT

28. With regard to Option 1: This decision could be appealed by the Interested Parties who have submitted representations.
29. With regard to Option 2: This decision could be appealed by the applicant or Interested Parties. The sub-committee must therefore take into account the Mandatory Conditions that would be attached to a premises licence (Appendix D) as well as the statutory Licence Conditions and Codes of Practice which licence holders must comply with and be satisfied that additional conditions are required in this instance.
30. With regard to Option 3: The applicant may appeal the decision to reject an application for a premises licence. The sub-committee must therefore be satisfied that despite aiming to permit the use of premises for gambling, to do so in this instance would not be in accordance with the licensing objectives, national guidance and Codes of Practice or our local policy.

EVALUATION

31. The sub-committee must have regard to all the representations made and the evidence it hears as well as the licensing objectives, the national guidance and Codes of Practice issued by the Gambling Commission and the Council's own Statement of Licensing Principles.

32. If a licence is granted, it would be subject to the Licence Conditions and Codes of Practice issued by the Gambling Commission, which requires that licensees have a number of policies and procedures in place regarding how they prevent underage gambling, prevent money laundering, how they interact with customers and deal with complaints as well as manage individuals who wish to 'self-exclude' from gambling.
33. The applicant has provided their local risk assessment as required, which can be found in Appendix A, along with the confirmation that (as recommended) they are part of BACTA (a trade body who provide a toolkit outlining adopted policies and procedures for their members). These documents detail the measures they will have in place to control the provision of gambling facilities and protect vulnerable persons and children and include the recommendations from our local policy such as regular staff training, CCTV in operation and display of signage.
34. The representations made have raised concerns primarily relating to the location of the premises on the grounds that gambling could be associated with crime and disorder and that children and vulnerable persons could be harmed/exploited by gambling activities.
35. It should be noted that the regeneration of an area is not something that the sub-committee can take into consideration when determining this application.
36. The national guidance issued by the Gambling Commission also specifies that moral and ethical considerations cannot be taken into account when determining licence applications (please see section 5.34 in Paragraph 19 of this report).
37. A significant concern for nearby residents is that due to the level of deprivation in the area, there may be vulnerable persons that could be exploited by such provision of gambling facilities.
38. The legislation and guidance do not define 'vulnerable persons' but section 5.17 of the guidance makes reference to this group including *"people who gamble more than they want to, people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance misuse relating to alcohol or drugs"*.
39. As part of the Joint Strategic Needs Assessment, the island was split into three localities; one of which being North East of the island, which includes Ryde. The information within the North East Locality profile shows that this area is the most densely populated out of the three areas and has the highest proportion of unemployment at 4.83%.
40. There are several domains taken into consideration when determining an overall 'Index of Multiple Deprivation' including employment, income, education/skills, crime and health. Ryde contains several areas which are within 20% of the most deprived on the island.

41. The concerns are that due to the profile of the area, it may be more likely that people could be considered vulnerable and could be exploited by gambling activities.
42. Section 5.18 of the guidance states that *"licensing authorities need to consider, in relation to particular premises, whether any special considerations apply in relation to the protection of vulnerable persons. This could be a local risk that is reflected in the licensing authority's statement of policy. Any such considerations need to be balanced against the authority's objective to aim to permit the use of premises for gambling."*
43. At the last review of the Council's local policy, there was no Local Area Profile put together focusing on risks regarding gambling activities. There is therefore nothing specific in the current policy in relation to the area of Ryde.
44. The applicant has stated in their risk assessment and there are details in the BACTA operating procedures which include that leaflets will be displayed directing people to where they can get help if they have a problem with gambling and a customer interaction policy describing the signs to look for and how staff should deal with such customers.
45. There are also concerns that the fairground and the current arcade attract children; interested parties therefore believe children would be susceptible to the negative consequences of gambling by these premises being situated in this location.
46. The applicant proposes a 'sterile area' between the Family Entertainment Centre and the area to be licensed as an Adult Gaming Centre. As shown in their plans, they also propose the area to be obstructed from the general public by a barriered entrance as well as glass screens to prevent visibility and unauthorised access to under 18s.
47. Under 18s gaining access is a risk identified in the applicant's assessment and their other actions to mitigate this risk are that the area is to be monitored by staff at the cash desk and that the area is covered by CCTV. There is also an age verification policy in place and a procedure to be followed by staff to ensure that those admitted entry to the area are over 18 years old.
48. Paragraph 20 above contains the guidance regarding access to gambling by children and young people and describes the considerations for entrances/exits as well as the imagery and advertising that is used in the premises.
49. The practices adopted by BACTA include details of the advertising that will be used and specifies that people who look under 25 are not used in such materials and marketing does not occur where more than 20% of the audience is under 18 years old.
50. Although direct access between an unlicensed Family Entertainment Centre and an Adult Gaming Centre is prohibited, there is no definition of "direct access" in the legislation or regulations but section 7.22 of the guidance

states, *“authorities may consider that there should be an area separating the premises concerned, for example a street or cafe, which the public go to for purposes other than gambling, for there to be no direct access”*.

51. The sub-committee should be aware that (Arcadia, situated closer to the town centre along the Esplanade), already operate under a Family Entertainment Centre Permit and an Adult Gaming Centre Premises Licence in a similar way to that proposed in this application. Sandown Pier also operate under the same authorisations.
52. As there is no case law to give a legal definition of “direct access”, similar layout designs have been permitted elsewhere on the island previously as well as in other district council areas nationally. It would therefore not be appropriate to prevent the use of the premises in this way at this time.
53. With regard to the option of rejecting the application, the sub-committee must aim to permit the use of premises for gambling and there does not appear to be sufficient grounds to reject as the proposals appear to be in line with the Codes of Practice, Guidance, Licensing Objectives and our local Statement of Licensing Principles.
54. Despite the risks identified, the applicant has thorough policies and procedures in place to mitigate these, which are in line with regulatory guidance.
55. There have also been no representations received from any of the responsible authorities that were consulted as part of the application process.
56. I draw attention to section 5.31 of the guidance, which states *“licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through the use of conditions”*.
57. If the sub-committee have concerns, they could consider whether there are conditions that would address these.
58. In this instance, I would draw members’ attention to Paragraph 21 of this report which give direction regarding attaching additional conditions to licences. The sub-committee need not impose conditions to deal with matters that are addressed by mandatory conditions. Conditions must also be proportionate and directly related to the premises.
59. *The sub-committee must determine the application in accordance with section 153 of the Gambling Act 2005, which states that the authority shall aim to permit the use of premises for gambling in so far as they think it is:*
 - In accordance with any relevant Code of Practice issued by the Gambling Commission
 - In accordance with any relevant guidance issued by the Gambling Commission
 - Reasonably consistently with the licensing objectives, and
 - In accordance with the Council’s Statement of Licensing Policy.

RECOMMENDATION

60. That the sub-committee grant the licence (with conditions if they deem it appropriate, relevant and proportionate for these premises and its locality).

APPENDICES ATTACHED

[Appendix A](#) Application for a Premises Licence under the Gambling Act 2005

[Appendix B](#) Representations received from Interested Parties

[Appendix C](#) Representations received from the applicant (including procedures)

[Appendix D](#) Mandatory Conditions to be attached to Adult Gaming Centre Premises Licences

BACKGROUND PAPERS

- Isle of Wight Council Gambling Act 2005 Statement of Licensing Principles
<https://www.iow.gov.uk/azservices/documents/1226-Gambling-Policy-19-22-Approved.pdf>
- Statutory Guidance issued by the Gambling Commission under section 25 of the Gambling Act 2005
<https://www.gamblingcommission.gov.uk/for-licensing-authorities/GLA/Guidance-to-licensing-authorities.aspx>
- BACTA policies and procedures
(not publicly available but their Charter can be found [here](#))

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