



NORWICH
City Council

NOTICE OF DETERMINATION

**Application for the grant of a premises licence for an Adult Gaming Centre at
20A-22 St Stephens Street, Norwich, Norfolk NR1 3SA**

Date of Hearing: 6th November 2017 Name of Applicant: Luxury Leisure

Address: 362C Dukesway, Team Valley Trading Estate, Gateshead NE11 0PZ

Members of Licensing Sub-Committee: Councillors Button (Chair), Ackroyd & Malik

Other persons present: On behalf of the applicant – Mr Stephen Walsh QC, Mr Jeremy Bark, Ms Elizabeth Speed, Mr Mark Thompson and Mr Sean Hooper.

Present on behalf of Cashino Gaming Ltd – Mr David Biesterfield, and Ms Sue Poynter.

Other persons who had made representations – Ms Jill Jones and Ms Michele Paton.

Also present – Councillor Martin Schmierer, Mr D Lowens, Clerk and Mr Anthony Shearman, Environmental Protection, Licensing and Markets Manager for Norwich City Council.

There were no declarations of interest.

Committee agreed to consider the additional information provided by Mr Biesterfield dated 2nd November 2017, after hearing from those present with their comments. Time was taken to consider the contents. Committee also received a further colour copy of the ground floor plan of the intended premises with the premises boundary and the gaming machine area shown.

SUMMARY NOTES OF HEARING

Mr Shearman introduced the report, referred to the contents of the committee report and noting the council's statement of principles was dated January 2017. He noted the maximum percentage of B3/B4 machines at 20%. Committee was informed that there were no representations received from the responsible authorities. Mr Shearman noted that objections had been received, including one which was placed 'below the line' on the committee's papers due to the confidential personal data contained. Mr Shearman outlined section 153 of the Act and the other local

gambling premises being eight betting shops and one other Adult Gaming Centre (AGC).

Committee was then addressed by Councillor Schmierer, present as an observer, who explained his dissatisfaction with the information he had received from the licensing office relating to the last day for receipt of representations. Mr Shearman responded to this point and confirmed that procedures had been overhauled.

Mr Stephen Walsh Q.C. presented the case for the applicant, noting the application was made fully in accordance with the relevant legislation. This was a company with vast experience and which holds an operating licence. The company was previously part of Novamatic Global. The company has a history of effective management, with no history of AGC links to crime and disorder. The applicant's policies and procedures were the product of years of development and it was suggested to committee that the Gambling Commission would not grant an operating licence if it felt the company's policies regarding vulnerable persons were not satisfactory. The company had a well-tested track record and liaises with the Gambling Commission on a regular basis.

Staff training was a key element of the company's activities, especially regarding children and vulnerable persons. A 'think 25' policy exists. Under 18s cannot enter the premises. The company operates a test purchase operation whereby unannounced visits are carried out. Results are shared with the Gambling Commission. Regarding the premises themselves, there will be clear sight lines from the staff to the machines. The applicant noted that B2 machines were not permitted in AGC's and suggested that it was important that committee was aware that fixed-odds betting terminals were not included in this application. The applicant suggested that the NatCen report for the Gambling Commission dealt with the need for fixed-odds betting terminals to be reviewed, but there was no evidence that a review was warranted in respect of B3/B4 machines.

The applicant suggested the risk assessment contained within the committee's papers were best-practice documentation. The risk assessment was 'organic' and had already been reviewed regarding the presence of a free school and the student accommodation shortly to be arriving at what were previously the offices of Aviva. The applicant noted that the risks had been discussed carefully with the responsible authorities and asked committee to give weight to the fact that there were no responsible authority objections. The Gambling Commission raised no concern and neither did the police. Discussions regarding CCTV and how under-18s, for example, were denied access to the premises had been discussed with the police.

The applicant noted that representations from residents gave general concern regarding gambling and its impact upon children and vulnerable persons. The applicant suggested that these concerns were addressed in the wide-ranging policies held by the company, and noted the legislation was designed to allow this use with sufficient controls.

The applicant noted that any re-write of the 2007 Gambling Act Statement of Principles would need to follow consultation and consideration of matters raised and it would be a problem for the committee to take account of what the policy might say if it was reviewed. The applicant noted that the council should not base a decision

on a general dislike of gambling and that the legislation in summary was permissive and the application should be granted, unless the council could identify a particular issue meriting refusal.

The applicant noted Cashino Gaming Ltd's objection, and reminded committee that the Gambling Act forbids consideration of demand and section 172 prohibits conditions on gaming machines. The applicant noted that AGC's were regulated separately from betting offices, and in Norwich, Cashino were the only other AGC. The Gibraltar case was mentioned, and whilst the judge said that untrammelled competition can be damaging, the applicant noted that AGC's were very heavily regulated.

In response to a question from Councillor Malik the applicant noted that, had the police or child protection team had concerns, they would have made a representation, and the applicant confirmed that the crime prevention officer of the police had been involved in discussions. The licensing manager noted the standard practice of the general exchange of information behind the scenes and that it is only if the responsible authority is concerned that a representation will generally go on the committee papers.

The applicant, via the regional manager, gave details as to the training of staff, noting that one task was recognition of vulnerable players. Policy 25 was mentioned. The premises were expected to hold 90-100 machines, therefore meaning that there would be 19-20 B3 type machines. Whilst planning is not a relevant consideration, the midnight restriction of the planning legislation was mentioned in passing, applying seven days a week.

In response to a question from Councillor Ackroyd the applicant explained how they would recognise vulnerable persons, noting that 98-99% of customers are regular customers and a change in their pattern of play would be noticed.

In response to a question from Councillor Button the applicant mentioned their self-exclusion scheme and whilst this data was not shared with the bookmakers the applicant was intending to be involved in the "shopwatch" police scheme so that intelligence could be shared.

Councillor Button asked about use of the rear entrance. The applicant noted that the only entrance would be to the front of the premises, the rear entrance being only for emergency use.

There were no questions to the applicant from Cashino Gaming Ltd.

The applicant then responded to questions from residents and was asked how they could prove that no problems would arise and referred the questioner to their track record, their contact with the Gambling Commission and the test regulation that took place. Training of staff was refreshed and documented and the Gambling Commission also look at this area. An independent company carries out the tests.

Councillor Button then asked about the numbers of staff. The business was likely to operate with a minimum of two members of staff but the ratio depended upon the number of customers. The company runs approximately 250 premises nationally,

and wouldn't suggest that door staff were necessary, as a generalisation. The level of CCTV control was mentioned with 32 cameras likely to be installed.

Mr Biesterfield, on behalf of Cashino Gaming Ltd, then addressed committee. He discussed the number of existing facilities in the area, and noted there was nothing in the statement of policy requiring the responsible authority re vulnerable persons to be informed. Mr Biesterfield confirmed to committee that the applicant was a responsible and professional operator, and noted that Cashino Gaming Ltd also adopted the discussed procedures.

Mr Biesterfield suggested that the various machines in betting establishments should be taken into consideration, and that the Gamcare study provided little evidence that self-regulating matters had made any significant impact upon problem gambling. Measures taken to date were not preventing harm and gamblers had problems with both B2 and B3 machines. Session losses with B3 machines were comparable with losses using B2 machines. Factors relating to harm to a player were wider than one product. The committee was obliged to take into account local circumstances. Under section 153, the aim to permit could be overridden if committee felt that there would be conflict with the relevant issues and it was not right to say the burden is upon the objector. The committee was now provided with a range of data to assist their deliberations, and concerns should not be discounted as Cashino Gaming Ltd were trading objectors. If the premises were allowed, there would be an increase of approximately 130% of the number of machines in Norwich, and, whilst demand was not a consideration, if committee was to feel that the grant would harm vulnerable persons Mr Biesterfield suggested that the committee may not grant the application. There was an overlap between B2 and B3. Regarding conditions, Mr Biesterfield suggested these were not working due to problems existing and continuing. The government he noted was not permitting even an inflationary rise in prizes due to concerns.

Mr Biesterfield then described the methods for ensuring there was a maximum number of high stakes machines present and suggested those most vulnerable to issues of problem gambling would be on these machines. There was no suggestion that there has been a discussion with those representing the interests of vulnerable persons and Mr Biesterfield suggested that the failure to make representations did not mean that the responsible authorities do not have concerns.

Mr Biesterfield spoke regarding the Gibraltar case (referenced in Cashino Gaming Ltd's representation) and stated that, in summary, competition increased consumer damage and a decision to prevent competition can be in the interests of the public. Competitors would make their own premises more attractive for gambling, losses would increase and this would increase harm. Promotions, for example, would take place and mobile phone details would be obtained and special offers provided. He suggested the question for committee was whether there was a threat to vulnerable persons.

Mr Biesterfield summed up the objection from Cashino Gaming Ltd. On their behalf he stated that there were vulnerable persons in Norwich and at a greater number than might be expected from the prosperous presentation of the city. There was an absolute and incontrovertible link between deprivation and problem gambling, and this was very relevant to the third licensing objective. Committee had a duty to

protect individuals from harmful exploitation and if committee felt this was a risk they had an unfettered discretion to refuse the application. It was relevant that things done up to now were not working out as they should, and the risk assessment lacked adequate detail regarding risks to the vulnerable. Mr Biesterfield suggested that nearly 20% of slot machine players were at risk/problem gamblers, rising to 43% of the players of B2 machines. Significant financial problems would be caused to many persons in Norwich. Mr Biesterfield referred again to the Gibraltar case and noted especially paragraph 119, and reminded committee of its role to protect the public interest.

There were no questions to Cashino Gaming Ltd from the applicant.

Ms Michele Paton addressed committee, noting her experience working for Norfolk County Council in child welfare and explained that in this role she had gained much experience regarding children and their welfare. The great majority of children ended up in care due to poverty and deprivation and addiction often arose. Poverty was exacerbated by a gambling addiction and the Mancroft Ward had shocking levels of deprivation. She suggested that crime and disorder need not be in the street and allowing the application would bring poverty into houses. She did not feel there was any difference between B3 and B2 machines, it was the same activity, and the amount of money lost was the same. She suggested it would be contradictory for the council, who were trying to decrease inequality, if the establishment of an adult gaming centre was permitted. She also addressed committee regarding problem gamblers, who stole from their family to carry out gambling, and noted gambling was an addiction like alcohol and drugs.

Ms Jill Jones also addressed committee in accordance with her representation.

There were no questions to Ms Paton and Ms Jones.

The applicant summed up the application, noting section 153 was permissive, and that the licensing authority should permit where an application was compliant with legislation and guidance including the code of practice guidance, the licensing policy of the council and consistent with objectives. Protection of children and the vulnerable had to be in the context of this permissive system and reference was made to the applicant's policies under their risk assessment. Issues of problem gambling and vulnerable persons were in the minds of the applicant, and were addressed in their training and controls.

FINDINGS OF FACT

The committee made the following findings of fact.

- 1) If the Norfolk Constabulary were concerned regarding the application, they were expected to make representations. Committee proceeded on the basis that they had no concerns to mention to the committee as they had been in discussion with the applicant and they had not made representations.
- 2) Committee members were aware that Norwich contained many vulnerable persons and there were significant issues with poverty, this was known from their position as councillors. The councillors were aware of the local

circumstances of St Stephens Street and that numbers of children were likely to be in the area if for no other reason than the number of bus stops in the street and the presence of significant shopping facilities.

- 3) There were no matters set out in the social responsibility local risk assessment which showed gaps in consideration of relevant matters or their control to an extent to suggest the social responsibility local risk assessment was flawed in a fundamental particular. It was regrettable that the document suggested the local authority did not have a statement of principles but committee felt that the applicant's risk assessment took account of those matters within the 2007 policy to a satisfactory extent, even if the policy itself was not referred to. The policy noted the need to protect children and vulnerable persons from harm or being exploited by gambling and noted that measures to meet the licensing objectives included proof of age schemes, CCTV, supervision of entrances and machine areas, location of entry, notices/signage, self-exclusion schemes and provision of information re assistance for gambling issues, in all of which areas the committee found the applicant had provided satisfactory details. Children would not be allowed on the premises. Whilst the "Local Area and Site Profile" does not mention vulnerable persons there are adequate controls set out in the following schedule relating to the provision of information on responsible gambling, controls on problem gambling and self-exclusion matters.
- 4) The applicant is a professional and skilled operator of AGC's. There is no reason to think that staff training and control would be unsatisfactory. The committee accepted the comments made as to the applicant's excellent record in relation to independent inspections. Adequate signage and adequate controls relating to children and vulnerable persons would be present and enforced on the premises. Committee found that the applicant had procedures and policies in place that would protect children (Challenge 25) and vulnerable persons and that staff training was satisfactory.
- 5) It was accepted that the introduction of the proposed facility would significantly increase the number of machines in the centre of Norwich and that it was likely that completion would involve those with AGC businesses attempting to make their premises attractive to those wishing to use the facilities contained. It was felt that AGC premises are competently regulated.
- 6) The committee did not find that gambling at an AGC was inherently damaging to the vulnerable to the extent that even a proposal for a well-run business as proposed by the applicant should be refused on grounds of the protection of public health. The committee felt that to do otherwise would be to ignore the permissive nature of the legislation.


DECISION OF COMMITTEE

The committee granted the application by a majority vote.

REASONS FOR THE COMMITTEE'S DECISION



- 1) This is a lawful use and the Gambling Act 2005 requires the council to aim to permit the use of premises for gambling so far as it thinks this is in accordance with any relevant code of practice under section 24 and in accordance with any relevant guidance provided by the Commission under section 25, reasonably consistent with the licensing objectives (subject to other matters) and in accordance with the statement published by the council (subject to other matters). Committee has not taken into account a moral dislike of gambling, nor the planning situation nor the expected demand for the facilities which it is proposed to provide. The committee notes that a licensing authority has no discretion to grant a premises licence where that would mean taking a course which it does not think is in accordance with the guidance contained in the Gambling Commission's statement of licensing policy, any relevant Commission code of practice, the licensing objectives or the council's statement of policy.
- 2) Significant weight was given to the fact there are no responsible authority objections.
- 3) The primary concern regarding the application was in respect of the objective of protecting vulnerable persons from being harmed or exploited by gambling. There was no suggestion that gambling at the premises would not be conducted in a fair and open way. It was not felt that the way the premises were intended to be run would cause concerns regarding crime and disorder as specified in section 1(a) of the 2005 Act. Controls in relation to protecting children from being harmed or exploited by gambling appeared to be satisfactorily regarding entry conditions, controls within the premises and staff training.
- 4) Reference to the meaning of vulnerable persons 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. Committee accepted the presentation by the applicant that satisfactory policies were in effect, staff training was provided and maintained and that the great majority of gamblers were known to the staff, who would be aware of and able to interfere, if any aspect of concern was raised.
- 5) The committee is satisfied the proposed use would be in accordance with s153. The committee was not willing to agree to the proposal that any risk of harm to the vulnerable merited refusal of the application noting that this would be an impossible task for any operator to control in that action could only be taken once problems had become visible and reference should be made to how well or otherwise the premises were run.
- 6) In summary, this is a responsible and professional operator with great experience who is not objected to by any responsible authority. Regarding the safeguarding of children, there are adequate age controls in place to prevent access. Regarding the harming of the vulnerable, it is felt there are sufficient controls and policies in effect to deal with this issue and prevent harm to the vulnerable, so far as this is within the capabilities of the applicant.

 Dated 24 November 2017

Signed by Councillor Sally Button, chair licensing sub-committee.

Rights of appeal – The applicant and a person who has made a representation in relation to the application may appeal this decision. In accordance with the Gambling Act 2005:

An appeal under section 206 in relation to premises must be instituted–

- (a) in the magistrates' court for a local justice area in which the premises are wholly or partly situated,
- (b) by notice of appeal given to the designated officer, and
- (c) within the period of 21 days beginning with the day on which the appellant receives notice of the decision against which the appeal is brought.