

Date: 05.05.17

Regulatory Services (Licensing Section)
London Borough of Brent
Civic Centre
Engineers Way
Wembley
HA9 0FJ

Dear Sir,

Gambling Act 2005 - Application for Adult Gaming Centre Premises License by East Kent Leasing Limited (Trading as "Palace Amusements") for premises at 322 Neasden Lane, NW10 0AD.

This representation in relation to the above application is made on behalf of my client, Cashino Gaming Ltd, which operates an Adult Gaming Centre at 304 Neasden Lane.

In this letter, the following abbreviations are used:

- "The Act" means the Gambling Act 2015;
- "The CSSA" means the Safer Brent Partnership's Community Safety Strategic Assessment 2015-17;
- "The Gibraltar Case" means *Gibraltar Betting & Gaming Association Ltd - and - (1) The Secretary of State for Culture, Media & Sport (2) The Gambling Commission - and - (1) The Government of Gibraltar (2) The Gibraltar Gambling Commissioner*;
- "The GC" means the Gambling Commission;
- "The GC's Guidance" means the Gambling Commission's Guidance to Licensing Authorities 5th Edition;
- "The LA" means the Council of the London Borough of Brent ("Brent") as licensing authority under the terms of the S 2(1)(c) of the Act;
- "The LA's SoP" means Brent's Statement of Principles 2016-2019;
- "The LCCP" means the GC's Licence conditions and codes of practice – January 2017;



- “The Licensing Objectives” means those set out in S1 of the Act¹.

“Interested Party”

Cashino Gaming Limited is an “Interested Party” in terms of S 158(b) of the Act, paragraph 8.14 and 8.15 of the GC’s Guidance² and the definition of that term in the LA’s SoP. In the unlikely event of my client’s status as an “Interested Party” being disputed, I would be happy to provide further explanation.

As will become apparent, while my client’s business *will* be affected in terms of competition, its objection to the above application is not based on “demand” but on the potential impact of the proposal on (and the LA’s obligation and ability to consider the application against) the Licensing Objectives. My client’s objection is therefore admissible, relevant and cannot be said to be vexatious or frivolous.

I understand that Councillor Krupesh Hirani, who is an “Interested Party” in terms of S 158 (c) of the Act, has also lodged an objection to the application. At the time of writing, I have seen only the first version of this objection, which I understand the LA treated as invalid on the basis that it was based on “demand”. I suggest that if that criticism is correct in relation to part of the original objection, it was incorrect in relation to other parts. As I understand it, the objection, as originally drawn and omitting references to the question of “demand”, stated:

The Neasden shopping centre has known gang activity where there is class A drug dealing around the shopping centre. The current betting shops at the centre attract gang members and they are regularly seen hanging around existing betting establishments at the shopping centre. The amount of establishments selling alcohol have drastically increased over the last five years too. This had led to a sharp increase in street drinking at the shopping centre area. In addition many with mental health needs use the shopping centre on a daily basis and can be seen street drinking and laying on the floor as well as begging. The deadly combination of available alcohol, vulnerable people, gangs, drug dealing make another betting establishment in Neasden unwelcome. The addition of the Adult Gaming Centre will support more crime and disorder in the area.

Vulnerable people such as the beggars and people with mental health needs at the Centre are at further risk from being confronted with more drug dealing on top of an additional gambling option.

¹ 1. Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime. 2. Ensuring that gambling is conducted in a fair and open way. 3. Protecting children and other vulnerable persons from being harmed or exploited by gambling.

² **The nature and scope of business interests that could be affected:** 8.15 The licensing authority should be satisfied that the relevant business is likely to be affected. Factors that are likely to be relevant include: the size of the premises; the ‘catchment’ area of the premises, that is, how far people travel to visit the premises; whether the person making the representation has business interests in that catchment area that might be affected.

My client relies on and supports the Councillor's views as set out in that original objection/statement insofar as they do **not** rely on "demand" but, rather, insofar as they raise and rely on the Licensing Objectives.

Accordingly and noting that the licensing officer has confirmed that three valid objections have now been submitted, including one from the LA, a hearing in relation to the application is mandatory, subject to the terms of S 162 of the Act³.

The Proper Approach to the Application

At the prospective hearing, the starting point for the consideration of the application will be S 153 of the Act⁴. The following points relate to the correct interpretation of that section:

- Local knowledge is at the heart of the application process. This is born out by the fact that it is the LA that is responsible for the issue of Premises Licences with the GC making clear that it will not usually make any representations in respect of particular applications⁵.
- Armed with that local knowledge, if the LA does not "think" that the use of the application premises is "in accordance" with any provision of the LCCP, the GC's Guidance or the SoP; or "thinks" it is not "reasonably consistent with the licensing objectives", the "aim to permit" is effectively dis-applied (although the possible role of imposed conditions and, in the particular circumstances, their likely efficacy, will be relevant). Indeed, per paragraph 5.20 of the GC's Guidance: "*Whilst there is a*

³ S 162 Requirement for hearing

(1) In determining an application for a premises licence a licensing authority must hold a hearing if—

(a) an interested party or responsible authority has made (and not withdrawn) representations about the application under section 161.....

(4) If a licensing authority propose to determine an application in reliance on subsection (3) they shall as soon as is reasonably practicable notify any person who made representations under section 161.

⁴ S 153 Principles to be applied

(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,

(b) in accordance with any relevant guidance issued by the Commission under section 25,

(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)).

(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.

⁵ Para 7.55 of the GC's Guidance: *The Commission does not routinely make representations on premises licence applications. However, the fact that the Commission has not made a representation on a particular premises licence application should not be taken as indicating the Commission's approval of that application.*

*presumption in favour of permitting the relevant premises to be used for gambling, the licensing authority **may not do so** [emphasis added] unless satisfied that such use would be in accordance with this guidance, any relevant Commission code of practice, its own statement of licensing policy, and the licensing objectives”.*

- While an evidence-based approach to decision making is desirable, the Courts have acknowledged that such an approach cannot always be a prerequisite (see the Gibraltar Case⁶). Put simply, not every issue is susceptible to empirical evidence.
- Accordingly, the LA has a wide discretion in deciding whether a particular application should be granted and is obliged to take account of local circumstances.

It is also pertinent to draw attention to certain statements of the obvious - all of them endorsed by judicial authority (e.g. by Green J, in parts quoting other authorities with approval, in the Gibraltar Case— footnotes 7 and 8, below, comprise extracts from Green J’s decision:

- Controls on the issue of gambling premises licenses are an adjunct of ‘consumer protection’. The Act is essentially permissive but not in an unbridled sense – hence, the terms of S 153 as explained above. Any other view would negate those terms.
- The desirability of competition in the context of gambling provision is not to be regarded in the same way as in the context of other, potentially less harmful, consumer activities⁷.
- It follows that if the LA “thinks” that the grant of an additional licence may conflict with one or more licensing objectives, it is fully entitled to refuse it.

Finally, it is appropriate to note that because of the overlap that has developed between betting premises and AGC’s (see **The Nature of the Use**, below), problems related to the licensing objectives and driven principally

⁶ Extract from the Gibraltar Case: *In my view the extent to which a justification requires evidence to support it depends upon the nature of the measure in issue. As Lord Neuberger pointed out in Sinclair Collis (para [238]) some measures appeal to common sense and not to an arithmetical or a “mechanistic” analysis. Some measures can also be justified “as a matter of elementary economic logic” (ibid para [242]) and equally some criticisms of a measure can be justified by the same token. ... The view expressed in Sinclair Collis is consistent with the position adopted by the Court of Justice in Pfleger (ibid) paragraph [51] (set out at paragraph [97] above) to the effect that “studies” are not always required by way of justification.*

⁷ Extract from the Gibraltar Case: *Equally, in other cases the Court has made clear that whilst traditionally measures designed to reduce or curtail competition would be unacceptable, in the specific context of gambling, competition in its unbridled form tended to increase consumer welfare problems (e.g. addiction) and that therefore measures taken to restrict competition could be categorised as consumer orientated: See e.g. Pfleger at [46] set out in paragraph [97] below. [and] Furthermore, it is not disputed that, unlike the introduction of free, undistorted competition in a traditional market, the presence of that kind of competition in the very specific market of games of chance, that is to say, between several operators authorised to run the same games of chance, is liable to have detrimental effects, owing to the fact that those operators would be led to compete with each other in inventiveness to make what they offer more attractive than what their competitors offer, and thereby to increase consumers’ expenditure on gaming and the risks of their addiction (Joined Cases C-186/11 and C-209/11 Stanleybet International and Others EU:C:2013:33, paragraph 45).*

by B2 gaming machines in betting premises (e.g. their well-known exacerbation of problem gambling) may be further exacerbated by the provision of more B3 gaming machines in AGC's and the increased competition between all machine-gaming establishments, arising from the grant of an additional licence. In a recent Gamcare study⁸, the authors used data from the BGPS 2010 to estimate the proportion of revenues from different modes of gambling that originated from people with gambling problems (as measured by DSM-IV). The authors reported that 22.92% of revenues from B2 gaming machines derived from problem gamblers. Slot machines more generally were reported to generate 11.97% of revenue from problem gamblers (the figure for online slot machine style games was 11.42%).

Estimates of revenues from problem gamblers and moderate risk gamblers combined (using PGSI) were between 34.79% and 43.00% for B2 machines; between 17.31% and 34.07% for slot machines more generally and between 23.31% and 30.45% for online slot machine style games. The inter-play between machine gaming in betting premises and AGC's often takes the form of players trading up or down between B2 and B3 gaming machines as their luck changes⁹.

Local Circumstances

1. Profile of Brent

a. Section 6 of the SoP offers such a profile, informing the reader that:

- i. The area has a growing population of over 319,00, with very high ethnic diversity and a high proportion of residents under 30.
- ii. Deprivation is worst in the south of the borough "*with many people [not necessarily just those in the south of the borough] effectively excluded from the mainstream*". Though Neasden Lane itself is not within the most deprived residential areas, it serves them. As Councillor Hirani confirms: "*many with mental health needs use the shopping centre on a daily basis and can be seen street drinking and laying on the floor as well as begging. The deadly combination of available alcohol, vulnerable people, gangs, drug dealing make another betting establishment in Neasden unwelcome.... Vulnerable people such as the beggars and people with mental health needs at the Centre are at further risk from being confronted with more drug dealing on top of an additional gambling option.*"
- iii. The area's levels of deprivation are above average for England and contribute to the relatively poor health of many of its citizens.
- iv. Figure 3, within section 6 of the SoP, shows "*those licensed gambling premises..... located within 200 metres of establishments occupied or attended by vulnerable persons*"¹⁰. The

⁸ 'What proportion of gambling is problem gambling' Orford, Wardle and Griffiths - 2013.

⁹ This interpretation is that of Messrs Collins, Barr and Scott in their own recent report on impact of currently permitted B2 stakes.

¹⁰ Vulnerable persons are defined by the SoP as 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 mental impairment, alcohol or drugs. For example this may include those persons who are under the influence of alcohol and/or are drunk. persons who are under the influence of alcohol and/or are drunk*".

existing gambling premises on Neasden Lane are amongst those so identified. That said and as Councillor Hirani has pointed out, the 'vulnerable' are present in the area of the application site regardless of the presence of such establishments.

- v. On the issue of crime and disorder, *"The hotspots for crime and anti-social behaviour in Brent are generally the main town centres and high roads [including, specifically] Neasden. These hotspot areas are also where the majority of gambling premises are located. Between 1 April 2010 to 1 September 2014, the top five gambling premises for crime volume, accounted for 116 recorded crimes, including 33 violent crimes.....One identified issue related to gambling premises is criminal damage, particularly to gaming machines. To tackle this and other issues at gambling venues a partnership, a BetWatch scheme has been set up in Brent. Other crime prevention measure being trialled in the borough includes the introduction of bolted down furniture to reduce criminal damage, and regular uniformed police visits to gambling venues under 'Operation Gamer'."* [sic]
 - vi. Indeed by reference to the CSSA, the SoP (paragraph 5.2 dealing with the First Licensing Objective) confirms: *"Gambling venues have an impact on crime and disorder in the borough. In the 2015 Brent Community Safety Strategic Assessment, gambling premises were an identified contributor to 11 out of the 23 Anti-Social Behaviour (ASB) hotspots in the borough. The top five gambling premises made 105 ASB nuisance calls alone in the 12 month period from the 1 February 2014 to 31 January 2015. Between 1 April 2010 and 1 September 2014, the top five gambling premises for crime volume accounted for 116 recorded crimes, including 33 violent crimes.....The authority considers that serious nuisance and anti-social behaviour can sometimes amount to disorder, which is intended to mean activity that is more serious and disruptive than mere nuisance. The authority will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see or hear it, in determining whether the line has been crossed."*
 - b. Neasden's identification as an anti-social behaviour "blackspot" is again born out by Councillor Hirani's original statement/objection: *"The Neasden shopping centre has known gang activity where there is class A drug dealing around the shopping centre. The current betting shops at the centre attract gang members and they are regularly seen hanging around existing betting establishments at the shopping centre. The amount of establishments selling alcohol have drastically increased over the last five years too."*
 - c. The local profile illuminated by both the SoP and Councillor Hirani's comments is born out by Cashino's own experience, viz Neasden Lane is prone to:
 - i. Gang activity – Cashino's premises sustained a serious armed robbery two years ago;
 - ii. There is a local and endemic drug problem;
 - iii. The betting shops are the focus of loitering and this can over-spill to AGC's given the overlap in their activities;
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- iv. Neasden is correctly described as an antisocial behavior “blackspot” and the problems of criminal damage and, in particular, violence towards machines, common in betting premises, has the potential to produce additional problems for AGC operators;
- v. There are significant numbers of the ‘vulnerable’ present on the high street. Their exposure to risk would be exacerbated by additional gambling opportunities, especially as a result of the inevitably increased promotion of gambling opportunities arising from greater competition.

2. Existing Gambling Establishments

The following machine-gaming establishments are in very close proximity to the application site:

- a. Cashino (AGC Premises) 304 Neasden Lane;
- b. Coral (Betting Premises) 310 Neasden Lane;
- c. Jennings Bet (Betting Premises) 274 Neasden Lane;
- d. Power Leisure (Betting Premises) 328 Neasden Lane;
- e. William Hill (Betting Premises) 251-253 Neasden Lane.

Were the application to succeed at No. 322, there would be four machine-gaming establishments within a continuous frontage of only eleven shops and, taking into account both sides of the street, six such venues within a very small radius¹¹. This is as much a licensing as a planning point. The relevance to the licensing objectives stems from the propensity of a concentration of machine-gaming establishments to stimulate competitive promotions, in turn inevitably stimulating the propensity of machine-players, including the ‘vulnerable’, to increase their machine-gambling. The applicant is known for and indeed proclaims its active and effective policy on promotions¹².

The Nature of the Use

1. The applicant’s modus operandi

- a. There is some disparity between this applicant’s modus operandi, as asserted before the planning inspector, and the way it actually operates. In very brief summary, the applicant (more accurately a different company within the same group) told the planning inspector that it would operate a ‘shopper-oriented’ amusement centre, a format dictated and supported by the offer of retail sales of goods displayed in the shop-window.
- b. The evidence presented to the Inspector on Cashino’s behalf comprehensively established that

¹¹ For information, these premises presently provide 72 gaming machines.

¹² Per a recent article in Coinslot, the AGC sector’s trade paper, Jeremy Godden, the applicant’s Managing Director, was reported as aiming “...to increase his 15 strong chain of AGC’s in the south east to 50 by 2020”. He proposes to “...attract new players, not just retain our existing customer base.”. He is quoted as objecting to “over-onerous technical standards” but claimed that his company sponsors a different “atmosphere” which “comes from strong promotions....a particular approach of Palace Amusements”. He went on to say: “Our strong promotions are very much at the forefront of the industry”.

the applicant's group never operates 'retail sales' in its AGC's and routinely ignores conditions requiring them. In fact, few AGC operators, including my client, now offer retail sales. The Inspector, while acknowledging "...the considerable evidence and expertise of CGL [my client] on the significant changes to the operation and customer base of adult gaming centres and betting shops over the years, including those operated by the appellant..." concluded: "...a window display for the sale of goods could be secured by condition." On this basis, he drew "a notable distinction with surrounding betting shops where the displays are dominated by advertisements and a lack of internal visibility."

- c. In the planning context, that misconceived distinction related to 'vitality and viability', not relevant issues in the licensing context. But in that latter context, the way in which the overlap between AGC's and betting premises has grown over recent years with the advent of gaming machines in the latter and the substantial reliance of betting premises on such machines is relevant as may be the applicant's record of non-compliance with conditions. Even if the applicant pays lip service to the imposed planning condition, that will not lead to its AGC being other than a machine-oriented gaming establishment, as are the Cashino site at No. 304 and the numerous betting premises.
- d. It is understood that the applicant intends to trade '24 hours'.
- e. The applicant is on record as being correctly proud of its "*strong promotions*". My client makes no complaint about a competitor's pursuit of "*strong promotions*" but, self-evidently, neither it nor the nearby betting operators, could be expected to stand by while such promotions on the part of an incoming operator denuded their businesses. That *is* a matter for the LA to the extent that Brent may share the judiciary's concern as expressed in the Gibraltar Case: "... the presence of....competition in the very specific market of games of chance, that is to say, between several operators authorised to run the same games of chance, is liable to have detrimental effects, owing to the fact that those operators would be led to compete with each other in inventiveness to make what they offer more attractive than what their competitors offer, and thereby to increase consumers' expenditure on gaming and the risks of their addiction."

2. The overlap between AGC's & Betting Premises

- a. Before 1999, betting shops could not install gaming machines. Their initial ability to do was at first incidental but in the years immediately before the passing and implementation of the Act and inexorably since then, gaming machines have become an indispensable component of betting premises such that the overlap in operation between betting premises and AGC's is now indisputable. According to Landman Economics, commissioned by the Campaign for Fairer Gambling to conduct a research project on the economic impact of Fixed Odds Betting Terminals (FOBTs) in betting shops, "*In 2011/12 FOBT gambling overtook traditional Over-the-Counter (OTC) betting as the main source of revenue from betting shops for the first time.*"

Currently gross revenue from FOBTs is growing at around 7% per year in real terms"¹³. That trend is believed to have continued.

- b. In simple terms, the use of gaming machines, whether in AGC's or betting premises gives rise to the same licensing objective concerns with 'punters' often migrating between the two types of venue. In that sense at least, the distinction upon which the planning inspector relied, in my client's view naively and against the evidence, is irrelevant. For licensing and 'licensing objective' purposes, the level of provision of betting and AGC Premises in a given location may well be relevant (though not in terms of commercial 'demand').

3. Documents supporting the application

- a. **The Local Gambling Risk Assessment** – This document is not fit for purpose because:
 - i. Far from being an assessment of 'local risk' it makes no material reference to, for instance, the CSSA or, indeed, specific matters raised by the SoP. In this regard, the LCCP's provisions are explicit in referring to "local risks"¹⁴.
 - ii. In ostensibly profiling the *local* area, the applicant's document states: *"The AGC is located on a busy High Street. In the local surrounding there is a variety of typical high street shops which includes fast food restaurants/Coffee shops, Tesco's local and high street banks and building societies."* This could no doubt be said of virtually every town center, varying only the name of the supermarket. It goes on: *"Within 50 metres you will find one other AGC and some licensed betting shops."* Yet no examination is made of their modus operandi or how they will interrelate with the applicant's proposal. Further, it states: *"No auxiliary activities are offered other than Cat B3's, Cat C's and Cat D machines."* This essentially admits that no retail sales are contemplated, illustrating the applicant's misleading of the Planning Inspector who allowed the appeal relying on an assertion to the contrary. The profile concludes, contrary to the CSSA and the SoP: *"There is no known local problems with crime or anti-social behaviour linked to gambling but do have[sic] a certain amount of anti-social behaviour such as litter, graffiti and petty crime."*
- b. **The Money Laundering Risk Assessment**
 - i. Again, it is apparent that the applicant applies a 'one-size-fits-all' approach to the assessment of money-laundering risks. The document, while listing a range of obvious

¹³ The Economic Impact of Fixed Odds Betting Terminals A report by Howard Reed (Director, Landman Economics) April 2013

¹⁴ *"Social responsibility code provision 10.1.1 - Assessing local risk. All non-remote casino, adult gaming centre, bingo, family entertainment centre, betting and remote betting intermediary (trading room only) licences, except non-remote general betting (limited) and betting intermediary. - Licensees must assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In making risk assessments, licensees must take into account relevant matters identified in the licensing authority's statement of licensing policy. ... Licensees must in any case, undertake a local risk assessment when applying for a new premises licence."*

websites, makes no reference to their data and, worse, makes no reference to the issues of drug-dealing and criminal activity to which the SoP draws attention.

- ii. In light of those concerns, some of the identified, general risks seem to have been questionably assessed.

Objection

In summary, my client objects to the application and invites its refusal on the following grounds:

1. From its own experience, my client supports Councillor Hirani in his concern that, self-evidently and in the particular circumstances of Neasden (see above), the grant of the application would cause or exacerbate conflict with the first Licensing Objective¹⁵. The application site, which will operate around the clock, will be directly between two betting premises (Power Leisure and Coral) and close to the other two betting premises (Jennings and William Hill) – premises at which Councillor Hirani, with his extensive local knowledge, suggests that gang members “hang around” and adjacent to my client’s AGC. The CSSA and SoP support this concern. Neasden is identified as an antisocial behavior “blackspot” and the LA is entitled, indeed obliged, to take account of the risk that another gaming, specifically a gaming machine, outlet might well exacerbate existing problems – this has nothing to do with “demand”.
2. The application premises are also likely to cause or exacerbate conflict with the third Licensing Objective¹⁶. As Councillor Hirani attests and is born out by my client’s own experience, ‘vulnerable people’ are present in the vicinity of the application premises in substantial numbers. Responsible operators, including my client, the mainstream betting operators and, even the applicant will continue to take the steps outlined by the applicant’s risk assessment to identify and exclude ‘problem gamblers’ but those efforts inevitably have their limitations. As the courts have accepted, risks arising from over-provision (a concept different to “demand” – that there may be demand for yet more gaming machines, rather enforces the point that the ‘vulnerable’ may be more exposed to risks arising from their provision) are a legitimate target for regulatory control. Per the self-evident truths set out in the Gibraltar , competition may “*increase consumer welfare problems (e.g. addiction)*” and “*in the very specific market of games of chance, ... is liable to have detrimental effects [through competition] in inventiveness to make what they offer more attractive than what their competitors offer....*” Again, the grant of the application would conflict with the findings of both the CSSA and the SoP. Unsurprisingly, the applicant proclaims its use of “*strong promotions*” as an invaluable tool in building its business in highly competitive environments but the corollary is that the existing operators, including my client, cannot fairly be expected other than to respond in kind. The issue for the LA is whether that degree of competition poses a risk to the ‘vulnerable’, a concern to which Councillor Hirani attests and which judicial authority supports.
3. In the case of the matters raised in both the above paragraphs, the applicant suggests no preventative

¹⁵ Objective 1: Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.

¹⁶ Objective 3: Protecting children and other vulnerable persons from being harmed or exploited by gambling.

measures that the existing gambling operators, including my client, do not already take (including all possible efforts to identify and exclude 'problem gamblers': yet the problems identified by the CSSA, the SoP and Councillor Hirani persist. Their potential exacerbation arising from the grant of the application could not be met by the imposition of any condition. Indeed, the applicant suggests none.

4. Further, the applicant's Local Gambling Risk Assessment and its Money Laundering Risk Assessment are inadequate for the reasons above stated.

For those reasons, my client invites the refusal of the application.

I look forward to hearing from you with a view to settling a convenient time and date for the hearing.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'DH Biesterfield', with a stylized flourish at the end.

DH Biesterfield