

Re: Future Leisure Limited - application for new gambling premises licence, ref: 20/03575/LIGN

74 Queensway, London W2 3RL

Submission on behalf of interested parties

1 Introduction

1.1 This submission is made on behalf of South East Bayswater Residents Association (“SEBRA”). I have been asked to represent SEBRA at the hearing of this application, due to take place on Thursday 11 June 2020. A number of other interested parties have supported SEBRA’s representation.

1.2 These interested parties have all made ‘relevant representations’ under s161 Gambling Act 2005 (“GA05”) and in accordance with para 7.52 of the Gambling Commission’s Guidance to Local Authorities (“the Guidance”).

1.3 This submission is intended to assist the Licensing Sub-Committee and the parties by setting out in more detail why SEBRA believes that i) the application is not ‘reasonably consistent’ with the licensing objectives set out under s1 GA05¹; ii) that the application is not in accordance with the codes of practice under s24 GA05; iii) that the application is not in accordance with the relevant guidance issued by the Gambling Commission under s25 GA05; and iv) that the application is not in accordance with the Statement of Licensing Principles for Gambling (“SoLPG”) published by the licensing authority under s349 GA05.

2 Background

2.1 SEBRA’s representation clearly sets out their concerns. The representation is supported and amplified by other interested parties. These interested parties range from Ward Councillors to amenity societies, residents’ associations, local businesses and local residents. Together, the interested parties represent a significant cross-section of the community and those who are likely to be impacted by the application.

2.2 The premises is located in the heart of the Queensway ‘cumulative impact area’ (“CIA”) for the purposes of Licensing Act 2003 (“LA03”). Although not of course relevant in a Policy context to the Licensing Sub-Committee’s determination of this application, the evidence which underpins the existence of a CIA demonstrates the challenges inherent in managing the night-time economy in and around Queensway.

2.3 There are 3 premises licensed under LA03 in very close proximity to the applicant premises. These premises are: The Bayswater Arms at 99 Queensway (licensed under LA03 to ‘core

¹ -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.

hours’); McDonald’s at 76-78 Queensway (licensed under LA03 to midnight for late night refreshment); and Burger King at 70-72 Queensway (licensed under LA03 to midnight Sun-Thurs, 1am Fri-Sat).

2.4 The proximity of these premises and their potential symbiosis given the licensed hours and the location of the application premises is key to the concerns of the interested parties, and key to whether the application as presented interacts with the factors set out in s153 GA05 so as to justify the Licensing Sub-Committee granting the application, either as presented or in an amended format

3 The application

3.1 The application as submitted seeks a premises licence for an AGC i.e. for ‘*making Category B gaming machines available for use (an “adult gaming centre premises licence”)*’.²

3.2 The application did not detail the hours sought. As Members will be aware, there are no ‘default conditions’ under GA05 in respect of hours for AGC premises licences i.e. unless otherwise constrained during the application process, an AGC premises may open 24 hours per day, 7 days a week. The applicant has since confirmed that this is something that they at least wish to retain the option to do.³

3.3 Whilst SEBRA is concerned about the grant of a premises licence *per se*, if Members are minded to grant a premises licence SEBRA asks that the hours are significantly curtailed.

4 Licence and planning history

4.1 The premises was previously a branch of William Hill, and as such held a betting shop (other) premises licence. This licence was originally subject to the default condition for betting shop (other) premises in respect of hours, and so could open between 7am and 10pm.

4.2 The default condition was excluded following an appeal to the Magistrates’ Court arising from a refusal by the Licensing Sub-Committee of an application to exclude the default hours condition to permit the premises to open to midnight. SEBRA is unclear whether the premises did in fact make use of those hours.

4.3 We are aware that the absence of planning consent is one of only two matters which are expressly excluded from the factors which a licensing authority may take into account when considering a premises licence application but, for information purposes, it is believed that the applicant would need to seek planning consent for the proposed use.

5 Reasons for objection

² s150(1)(c) GA05

³ LSC Report p.119 para 33

5.1 The starting point in GA05 for a licensing authority in exercising their functions in respect of premises licence applications is s153, which provides that:

(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)).

5.2 s153(2) provides that *'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.'*

5.3 s153 has been the subject of a great deal of debate as to the meaning and implications of the 'aim to permit'. Para 5.20 of the Guidance states that *'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.'*

5.4 Para 1.4 of the SoLPG states that: *'The aim to permit principle provides wide scope for the authority to impose conditions on a premises licence, reject, review or revoke premises licences where there is a potential conflict with the relevant codes of practice, relevant Commissions Guidance and this Statement of Licensing Principles.'*

5.5 SEBRA has raised concerns in respect of each subparagraph of s153(1), and has also raised concerns in respect of anti-social behaviour/public nuisance. It is submitted that these latter issues are relevant to the Licensing Sub-Committee's consideration of this application. Further submissions will be made in this regard if necessary at the hearing.

5.6 SEBRA's representation also highlighted Appendix 4 of the SoLPG, which reproduces a byelaw applicable in Westminster, the *Pleasure Fairs (Amusement Premises) Byelaw* made by the Council in pursuance of Section 75 of the Public Health Act 1961, as amended by Section 22 of the Local Government (Miscellaneous Provisions) Act 1976. The byelaw limits the hours for 'amusement arcades' somewhat, between 9am to midnight.

The local area

5.7 Queensway and its surrounds will be familiar to Members. Queensway is described by Mr Zamit as a busy main shopping street but with lots of residential use above street level, including three large block of flats to south of the applicant premises. Moscow Road has

shops and two pubs but is very residential with large mansion blocks. Above and opposite the applicant premises is also residential.

5.8 Fast food restaurants are attractive to young people. There is a further fast food outlet (KFC) at 54 Queensway. SEBRA report that beggars sit along Queensway by fast food shops, banks, the two tube stations etc, and this is likely to happen outside the applicant premises too.

5.9 There are a number of premises in the local area with licences or permits under GA05, as set out in the LSC Report and in the applicant's Local Area Gambling Risk Assessment ("LAGRA").

5.10 Policy LOC1 of the SoLPG states that *'a sensitive location is defined as any premises which is within close proximity or on a main route to a school, educational institution, hostel or other sensitive locations where there is the potential for exposing children, young people or other vulnerable persons to gambling.'*

5.11 The premises occupy a prominent site opposite the junction with Moscow Road, and are located between a branch of McDonalds and a branch of Burger King. These premises are fast-food premises which attract heavy footfall to the area. Directly opposite the premises is the Bayswater Arms public house. Queensway tube station is also nearby.

5.12 Although the LAGRA appears to have been assiduously completed, it is not completely comprehensive. This is not a criticism of the applicant – it is difficult to account for every local factor. Those who know the area best are those who have submitted representations: Ward Councillors, amenity societies and local residents.

5.13 In particular, the LAGRA does not account for the following factors:

5.13.1 Queensway and surrounding streets currently experience the adverse effects of anti-social behaviour and nuisance arising from a number of sources. There is also a large number of homeless persons and people begging. These persons clearly fall within the definition of 'vulnerable persons' for the purposes of GA05.

5.13.2 There are a number of hostels on Inverness Terrace (which runs parallel to Queensway) accommodating previously homeless people.

5.13.3 The local police/Council have deemed it appropriate to designate *inter alia* Queensway and Inverness Terrace as a 'Community Protection Zone' to help police tackle the sharp increase in antisocial behaviour there during 'lockdown'.

5.14 These factors would fall to be considered under the licensing objectives of *'preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime'* and *'protecting children and other vulnerable persons from being harmed or exploited by gambling.'*

5.15 The LAGRA does account for the existence of the two fast food premises and the public house in close proximity in its assessment under the licensing objective of *'protecting children and other vulnerable persons from being harmed or exploited by gambling.'*⁴ The level of risk occurrence 'initially' under this licensing objective is assessed as 'high', although the risk of not being able to manage this is assessed as 'low'.

5.16 Clearly, it will be important for Members to consider whether they are assured that the risk is, in fact, low.

s153 factors

5.17 Is the application *'in accordance with any relevant code of practice under section 24'*? The following may be relevant to the Licensing Sub-Committee's consideration of this application.

5.17.1 Social Responsibility (SR) code 3.2.3(3) in the Licence Conditions and Codes of Practice (LCCP) states that *'licensees must ensure that their policies and procedures take account of the structure and layout of their gambling premises in order to prevent underage gambling.'*

5.17.2 SR code 3.2.3(3) in the LCCP states that *'Licensees must not deliberately provide facilities for gambling in such a way as to appeal particularly to children or young people, for example by reflecting or being associated with youth culture.'*

5.18 Is the application *'in accordance with any relevant guidance issued by the Commission under section 25'*? The following may be relevant to the Licensing Sub-Committee's consideration of this application.

5.18.1 Para 5.3 of the Guidance states that: *'Among other matters, licensing authorities may need to consider the location of premises in the context of this licensing objective. For example, in considering an application for a premises licence or permit that is in an area noted for particular problems with disorder, organised criminal activity etc, the licensing authority should think about what, if any, controls might be appropriate to prevent those premises being associated with or used to support crime. That might include conditions on the premises licence, such as a requirement for door supervisors.'*

5.18.2 Para 21.3 of the Guidance states that: *'Licensing authorities will wish to have **particular regard to the location of** and entry to AGCs to minimise the opportunities for under-18s to gain access. This may be of **particular importance in areas where young people may be unsupervised** for example, where an AGC is in a complex, such as a shopping centre or airport. Licensing authorities should consider whether their statement of policy can be used to reflect such locally based considerations.'* (my emphasis).

⁴ p131 of the LSC Report

5.19 Is the application *'reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b))'*?

5.19.1 SEBRA believes that the application raises issues under the following licensing objectives, for the reasons set out: *'preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime'* and *'protecting children and other vulnerable persons from being harmed or exploited by gambling.'*

5.19.2 In particular, it is a concern that 7 category B3 gaming machines will be made available for use. These machines have the same maximum stake (since April 2019) as category B2 gaming machines, and the same maximum prize.

5.19.3 It is felt that these licensing objectives will be particularly engaged in the late evening and through the night.

5.20 Is the application *'in accordance with the statement published by the authority under section 349 (subject to paragraphs (a) to (c))'*? The following may be relevant to the Licensing Sub-Committee's consideration of this application.

5.20.1 Policy LOC1 of Westminster's Statement of Licensing Principles for Gambling states that *'a sensitive location is defined as any premises which is within close proximity or on a main route to a school, educational institution, **hostel or other sensitive locations** where there is the potential for exposing children, young people or other vulnerable persons to gambling'*. (my emphasis).

5.20.1.1 Para 15.1 states that *'The council will pay particular attention to the suitability of a location for gambling activity in terms of the objective of the protection of children and vulnerable persons from being harmed or exploited by gambling, and the effect of crime and /or disorder on residents and on those working in and visiting the area.'*

5.20.1.2 The applicant has included⁵ details of its other AGC premises. Whilst there is nothing to suggest that these premises have not been appropriately managed, SEBRA do query whether the locations of these premises are comparable to Queensway in terms of the challenges they pose in relation to the relative footfall in the vicinity and the type of premises in the immediate vicinity of those premises.

5.20.2 Under Policy OBJ1 (related to the 'crime and disorder' licensing objective), para 11.1 states *'Whether the premises make or will make a contribution to the levels of crime and disorder and whether the applicant has demonstrated that he has, or intends to,*

⁵ p151 of the LSC Report

implement sufficient controls to prevent gambling from being a source of, and/or associated with crime or disorder, or being used to support crime, if the application is granted.'

5.20.2.1 Para 11.1.1 states *'Where an area is known for high levels of crime the council will consider carefully **whether gambling premises are suitable to be located there**, and whether additional conditions may be necessary, such as the provision of CCTV, minimum levels of staffing and licensed door supervisors, etc.'* (my emphasis).

5.20.2.2 Para 11.1.3 states *'Whilst issues of nuisance are not included specifically in the gambling objectives, the council may consider, when making decisions on the applications for premises licenses, that extreme instances of public nuisance and persistent public nuisance may constitute disorder and criminal offences.'*

5.20.3 Under OBJ3 (related to the 'protection of children and other vulnerable persons' licensing objective), para 13.1 states *'Whether there are appropriate measures in place to protect children and other vulnerable persons from being harmed or exploited by gambling.'*

5.20.3.1 Para 13.2 states that *'The location of the premises may be a significant factor if for example the premises are located near a school, hostel or other sensitive premises.'*

6 Amendments to the application

6.1 The additional conditions proposed with the application are noted, however SEBRA feels that they are currently insufficient, particularly absent a reduction in the proposed hours. s169(1)(a) GA05 enables a licensing authority to attach a condition(s) to a premises licence.

6.2 In particular, there is concern at the staffing levels and SIA provision. Additionally, there are a number of practical considerations. The area in front of the applicant premises is private forecourt. Will the facilities be advertised externally? Will flyers be handed out? What would be the extent and nature of the advertising/neon signage in/behind the windows? Will doors and windows remain closed?

7 Conclusion

7.1 SEBRA looks forward to attending the hearing and being part of the discussion. Their preference is that the application is refused. Should Members be minded to grant, SEBRA requests that the Licensing Sub-Committee imposes conditions which restrict hours of opening, and which deal robustly with other matters raised in this submission.

7.2 Thank you for taking the time to consider the content of this submission.

Richard Brown, Citizens Advice Westminster

8 June 2020