

ITEM NO:7

DECISION - MAKER:	LICENSING (GENERAL) SUB-COMMITTEE
DATE OF DECISION:	4TH JULY 2007
SUBJECT:	APPLICATION FOR AMUSEMENT WITH PRIZES PERMIT – CASH – IN AMUSEMENTS, 394 BITTERNE ROAD, SOUTHAMPTON
REPORT OF:	SOLICITOR TO THE COUNCIL
AUTHOR AND CONTACT DETAILS:	Phil Hall (telephone 8083 2704) (e-mail: phil.hall@southampton.gov.uk)

A. RECOMMENDATION

To consider and determine an application by Mr. Alan Durban and Mr. Graham Lewin for the grant of an amusements with prizes permit under section 34(5E) of the Gaming Act 1968 in respect of Cash In Amusements, 394 Bitterne Road, Southampton

B. REASONS FOR REPORT RECOMMENDATIONS

No recommendations are given. It is for the sub-committee to decide the application on its merits. The Chair will give the Sub-Committee's reasons for its decision after the Sub-Committee has considered the report and relevant matters raised at the meeting

C. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

The Sub-Committee has discretion to grant, with statutory conditions, but no others, or refuse the application for an amusement with prizes permit, subject to a duty to act reasonably.

D. WARDS /COMMUNITIES AFFECTED:

No wards are affected

SUMMARY

1. The application by Mr. Alan Durban and Mr. Graham Lewin is for the grant of an amusements with prizes permit under section 34(5E) of the Gaming Act 1968 in respect of Cash In Amusements, 394 Bitterne Road, Southampton
2. The Sub-Committee is requested to consider and determine the application. Applications for new amusement with prizes permits for premises used wholly or mainly for amusement purposes have not been delegated to the officers...

BACKGROUND & REPORT DETAILS

3. 394 Bitterne Road is currently vacant shop premises, which is adjacent to their existing premises at 396 Bitterne Road. The company wish to relocate from its existing premises to larger premises next door. If the application is granted the licence for No. 396 will be surrendered. This is subject to planning permission.
4. The permit, if granted, would permit the installation of any or all of the following:
 - amusements with prizes machines under section 34(5E) of the Gaming Act 1968 offering a maximum £35.00 cash jackpot for a maximum £0.50 stake. (all cash machines)
 - amusements with prizes machines under section 34(1) of the Gaming Act 1968 offering a maximum of £8.00 prize, comprised of a maximum £5.00 cash and the balance in tokens for a maximum £0.50 stake. (cash and tokens machines)
 - amusements with prizes by means of automated prize bingo under section 16 of the Lotteries and Amusements act 1976, offering a maximum £25.00 prize for a maximum £0.50 stake.
5. The legislation precludes the imposition of conditions restricting the number of machines in premises used wholly or mainly for amusement purposes.

6. The statutory conditions imposed on any permit granted exclude persons under 18 from the area containing the £35.00 “all cash” machines.
7. Although the City Council cannot impose conditions restricting the numbers of machines made available in the premises, the applicants have indicated that they intend to install thirty all cash machines.
8. The applicants have been invited to attend the Sub-Committee's meeting.
9. Plans showing the location and proposed internal layout of the premises appear in the appendix to this report.

POLICY FRAMEWORK IMPLICATIONS

10. The decision to determine the application in the manner set out in this report is not contrary to the Council's policy framework.

STATUTORY CONDITIONS AND HOME OFFICE ADVICE

11. The statutory conditions (in paragraph 10 (B) (3) of schedule 9 to the Gaming Act 1968) are set out below for information:-

“Where the permit is expressed to be granted for the purposes of section 34(5E) of this Act, it shall be subject to the following conditions, namely—

A

in the case of premises where admission is restricted to persons aged 18 or over, that no person under 18 is admitted to the premises; and

B

in the case of premises where admission is not restricted to persons aged 18 or over—

i.

that any machine in respect of which the conditions mentioned in section 34(5A) of this Act are observed is located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access otherwise than by means of an entrance designed for the purpose;

ii.

that only persons aged 18 or over are admitted to an area of the premises in which any such machine is located;

iii.

that access to an area of the premises in which any such machine is located is supervised;

iv.

that any area of the premises in which any such machine is located is so arranged as to permit all parts of it to be observed; and

v.

that at the entrance to, and inside, any such area there are prominently displayed notices indicating that access to the area is prohibited to persons aged under 18.

12. The Home Office view is that the structure separating such an area from the rest of the premises should be sufficient to prevent unauthorised access. The test is whether it is effective. The Home Office suggests the following criteria:-
 - i. A rope barrier for instance, would be insufficient as it would not be a physical structure and would not be effective in preventing access by children.
 - ii. Therefore the structure should be fixed, permanent or semi-permanent made of solid material.

- iii. The area must be observable, and therefore the partition should be transparent at least above machine height to allow people inside to be seen.
 - iv. The entrance must be monitored and effectively supervised by arcade staff.
 - v. The entrance must have prominent notices stating that no one under the age of 18 may be admitted.
 - vi. The area need not be gated but must be capable of being supervised.
 - vii. The entrance should be capable of being supervised and the area evacuated in the case of an emergency.
 - viii. In addition to the signs which must be posted at the entrances to the designated area, there is a voluntary agreement between the Home Office and the manufactures that the machines themselves will have a notice saying they are for the use by over 18's only. These notices will not have the force of law.
13. Home Office Circular 100/1988 gives advice about the grant of Amusement with Prizes permits for arcades and other amusement places as follows:
- i. "In cases of amusement places where the premises are to be devoted wholly or mainly to amusement with prizes machines, the grant of a permit is at the discretion of the local authority, but a permit cannot be refused without giving the application an opportunity of appearing before the authority and being heard by them. It follows that the authority has a duty to consider each case on its merits, and not decide it as a matter of general policy. There is no power to attach conditions to the grant of a permit (except as provided by Section 34(5E) as set out above).
 - ii. A local authority's discretion to refuse a permit is unaffected by the fact that planning permission may previously have been obtained for the use of premises as an amusement place. We see the discretion as entrusted to local authorities on general grounds as transcending planning considerations. This implies that, in considering an application, an authority should take careful account of the social considerations obtaining in its area. It may be, for example, that there are already sufficient amusement places in the area or that they are being over frequented by children or young people."

LEGAL IMPLICATIONS

14. The legislation allows the Sub-Committee to grant or refuse an amusement with prizes permit, subject to a duty to act reasonably, but the grounds for refusal are set out in paragraph 8 (1a) of Schedule 9 to the Gaming Act:
- ". . .the grant of a permit shall be at the discretion of the appropriate authority; but the appropriate authority shall not refuse to renew a permit except either on the grounds that they or their authorised representatives have been refused reasonable facilities to inspect the premises or by reason of the conditions or manner in which machines to which Part III of the Act applies have been used on the premises, or any other amusements have been provided or conducted on the premises, while the permit has been in force."
- "Part III of this Act" refers to amusement with prizes machines of the type proposed to be installed in these premises.
15. No conditions can be imposed on permits for Amusement with Prizes machines to be installed in amusement arcades or centres. Only the statutory conditions outlined above may be applied to S. 34 (5) E machines.

16. The Sub-committee will be aware that the provision of amusement with prizes is a lawful activity which Parliament has seen fit to regulate so as to prohibit persons under 18 years of age from having access to £35 “all cash” machines
17. An applicant for the grant of an amusement with prizes permit, whose application has been refused, may appeal against the decision to the Crown Court' Court.
18. In considering this application the Sub-Committee will sit in a quasi-judicial capacity and is thus obliged to consider applications in accordance with the rules of natural justice. The practical effect of this is that the Sub-Committee must make its decision based on the evidence presented to it at the meeting. Opportunities must be given to both the applicants and any objectors who have given prior notice to put their points of view, and ask questions of the parties concerned regarding their evidence.
19. *Crime and Disorder Act 1998*
Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various 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.
20. *Human Rights Act 1998*
The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of Proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affect another's' rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

FINANCIAL IMPLICATIONS

21. Not applicable.

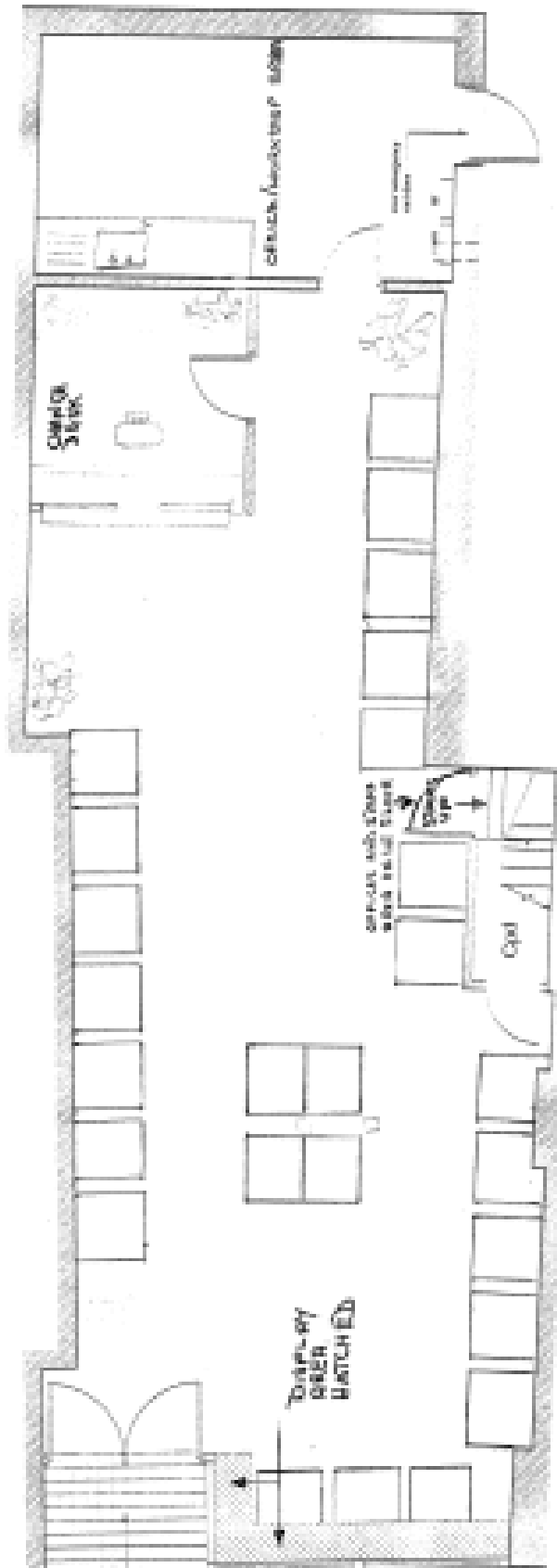
CONSULTATION AND CONCLUSIONS

22. On receipt of the notice of application, the Licensing Officer consults the City Council's Head of Planning and Sustainability and Hampshire Constabulary.
23. The Head of Planning and Sustainability has indicated that planning permission has been sought by the applicants for the change of use and the grant of permission has been recommended.
24. The Police have indicated that they have no objection to the application.
25. The legislation does not provided for any public consultation on such applications.

Plan of Premises

CASH IN AMUSEMENTS
394 BITTERNE ROAD

PROPOSED GROUND FLOOR PLAN
LICENSE APPLICATION



GROUND FLOOR PLAN

Appendix 1
Documents in Members Rooms

Plan of the premises
None

BACKGROUND PAPERS

Title of Background Paper

Application and supporting documents
Responses from Hampshire Constabulary and Head of Planning and Sustainability
Documents available for inspection at:

Relevant Paragraph of AIP Rules allowing document to be Exempt/ Confidential (if applicable)

Licensing Office, Legal & Democratic Services, Southbrook Rise, 4 - 8 Millbrook Road East.

ITEM NO:

TO BE DETACHED & RETAINED BY DEMOCRATIC SUPPORT BEFORE PUBLICATION

SOUTHAMPTON CITY COUNCIL DECISION REPORT MONITORING FORM

THIS FORM MUST BE COMPLETED FOR ALL REPORTS.

FAILURE TO COMPLETE THE FORM CORRECTLY WILL RESULT IN THE REPORT BEING REJECTED AND THE DECISION DELAYED.

DATE OF DECISION MAKING / MEETING **4TH JULY 2007**

DECISION MAKER: LICENSING (GENERAL) SUB-COMMITTEE

SUBJECT OF REPORT: **APPLICATION FOR AMUSEMENT WITH PRIZES PERMIT :- CASH - IN AMUSEMENTS, 394 BITTERNE ROAD, SOUTHAMPTON**

EXECUTIVE DECISION? ~~YES~~ **NO** *[delete one]*

KEY DECISION? ~~YES~~ **NO** *[delete one]*

DATE PROPOSAL INCLUDED IN FORWARD PLAN

(If you answered Yes to both Executive Decision and Key Decision insert date)

If this decision is an Executive Key Decision and has not been included in the Forward Plan you may only make the decision if it is within the exception criteria (regulation 15) or is an urgent decision (regulation 16)

REGULATION 15 EXCEPTION? YES NO *[delete one]* **N/A**

DATE NOTIFICATION GIVEN TO SCRUTINY:

REGULATION 16 URGENCY? YES NO *[delete one]* **N/A**

DATE AGREEMENT OF SCRUTINY OBTAINED:

IS THIS AN OFFICER DECISION? ~~YES~~ **NO** *[delete one]*

If this is an Officer Decision insert the paragraph number in the Scheme of Delegation allowing them to take this decision

REASON FOR CONFIDENTIALITY (where appropriate)

Insert the relevant paragraph number by which the document is exempt/confidential as set out in the Access to Information Procedure Rules paragraph 10.4 (Executive Functions) or Schedule 12A to the Local Government Act 1972 (Non-Executive Functions).

PEOPLE WHO HAVE BEEN CONSULTED IN THE PREPARATION OF THE REPORT

Notes:

1. A fourteen-day consultation period (10 working days) is required for all Trade Union consultations.
2. List all Cabinet Members consulted in preparation of the report.
3. List all internal departments consulted, the officer involved and the date consultation response was received. Departments to be consulted may include Legal, Finance, Human Resources, Property Services, IT etc.
4. List all external bodies consulted and dates of consultation.
5. All reports to Cabinet that have been to COMT should list date when COMT approval sought.

Name	Division/Portfolio	Date consultation Issued	Date comments Received
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NB: Consultation with Legal and Finance Officers does not constitute clearance of the Report, which is dealt with below. Reports containing property, personnel or IS / IT implications must be consulted upon with the relevant department and recorded above.

Approval by Level 1 Manager

Signature:

Date:

Approval by Executive Director/ Programme Manager

Signature:

Date:

LEGAL / FINANCIAL CLEARANCE

All reports require clearance from a Corporate Legal Advisor / Finance Support Officer. Clearance must be authenticated below by Signature (Physical or Digital), unless agreed otherwise by the Solicitor to the Council / Chief Finance Officer and evidenced in writing.

Corporate Legal Advisor	Signature	Date	Version Cleared
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/ Finance Officer

**Clearance
Obtained**