

**Subject:** APPLICATION FOR 3 AMUSEMENT WITH PRIZES GAMING MACHINES - GAMING ACT 1968 (AS AMENDED) **Status:** For Publication

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**Report to:** Licensing Committee **Date:** 29<sup>th</sup> August 2006

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**Section Head:** Head of Legal & Democratic Services **Report Author:** Daniel Dobson – Senior Enforcement Officer

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**Portfolio Holder:** Leader of the Council

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**Key Decision:** NO

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**PREMISES** : OLD COBBLERS INN, NEW HALL HEY ROAD, RAWTENSTALL

**APPLICATION** : S.34 GAMING PERMIT - GAMING ACT 1968 (AS AMENDED)

**NO. OF MACHINES** : 3

**1. PURPOSE OF REPORT**

1.1 To inform members of an application for a gaming permit under Section 34 Gaming Act 1968 (As amended).

**2. RECOMMENDATION**

2.1 The Licensing Committee are recommended to:

- a) Note the application and this report, and
- b) Having considered the contents of this report, resolve to grant or reject the application for a permit as required by Paragraph 8(2) Schedule 9 Gaming Act 1968.

**3. BACKGROUND**

3.1 Rossendale Borough Council is the authority appropriate to grant a gaming permit under Section 34 Gaming Act 1968 in relation to a location subject to a Premises Licence under the Licensing Act 2003.

- 3.2 Although the premises are licensed premises under the Licensing Act 2003, the grant of a Gaming Permit is not in law a 'licensing function' and a hearing is not subject to the Licensing Act 2003 (Hearings Regulations) 2005.
- 3.3 Members are however reminded that they have a continuing duty to promote the Licensing Objectives in relation to premises which hold a premises licence under the Licensing Act 2003.
- 3.4 The Statement of Licensing Policy adopted by this Council states :
- 19.1 *The issue of Gaming Permits is not a licensing function under the 2003 Act. The Licensing Committee discharging a non-licensing function, will however be prepared to grant Gaming Permits authorising up to two Section 34 Gaming Act machines in any premises (subject to the Gambling Bill 2004 amendments). If authorisation is sought for more than two machines the applicant will normally be required to personally apply to a Licensing Committee or Sub-Committee.*
- 19.2 *We will not restrict the age that children are able to play machines beyond the provisions of the Gaming Act 1968.*
- 19.3 *Parliament has placed no restrictions on the age at which Section 34(1) machines may be played (other than those in amusement arcades). It is therefore a matter for the discretion of the premises licence holder and any adults accompanying the children concerned whether they are entitled to play such machines.*
- 19.4 *In the case of premises used exclusively or primarily for the consumption of alcohol there, all children under the age of 16 will only be permitted entry to the premises if accompanied by adults. All Section 34(5e) machines must by law be sited within sight of the bar and persons under 18 years must not be allowed to gamble on such machines.*
- 3.5 The Gaming Act 1968 does not impose any upper limit on the number of AWP machines a 'pub' is permitted to have. In determining applications, authorities have the power to set a limit on the number, on a case by case basis.
- 3.6 In line with the current Justices' Clerks' Society good practice guide to Licensing Justices, the Department for Culture Media and Sport recommends that authorities dispense with a hearing where the application is for no more than two machines.
- 3.7 Paragraph 8(2) Schedule 9 Gaming Act 1968 states that
- “the grant or renewal of a permit shall be at the discretion of the appropriate authority, and in particular, the appropriate authority may refuse to grant any such permit on the grounds that, by reason of the purposes for which, or the persons by whom, or any circumstances in which the premises are used or are to be used, it is undesirable that machines to which Part III of this Act applies, should be used for providing amusement on those premises”***

- 3.8 Members have the right to grant or refuse a permit at their discretion, but cannot attach conditions to a permit.
- 3.9 The Spirit Group Ltd, the holders of the Premises Licence, through an agent, Leisure Link, have applied for 3 x Section 34 Gaming Machines for the above premises. This is the first application under the Act made to this Authority in relation to the premises. This application is appended at Appendix A.
- 3.10 Permits granted prior to 24<sup>th</sup> November 2005 were issued by the Courts, and remained valid during transition. The applicants have produced a permit granted by the Magistrate's Court at Burnley, which expires on the 10<sup>th</sup> September 2006, which permits three machines. This permit is appended at Appendix B.
- 3.11 The licence holders trade as a public house and Section 145 of the Licensing Act 2003 places a restriction on child access on the licence. The licence contains an additional and extended condition on this matter as referred to at 3.18.
- 3.12 The Senior Licensing Enforcement Officer has visited the premises and there are currently three Section 34(5)(e) machines sited on the premises, all in view of the bar. These machines have a jackpot of £25 and can only be played by persons who are 18 years of age or over. A plan of the relevant premises area is appended at Appendix C. A copy of the full plan will be made available for inspection at the meeting of the Licensing Committee on 29<sup>th</sup> August 2006.
- 3.13 There is a further Skill with Prizes (SWP) installed in the same area, such machines being outside the control of the 1968 Act.
- 3.14 The applicants however desire 3 x Section 34 Gaming Machines, and the Sub-Committee is therefore invited to determine the application on the third machine.
- 3.15 In law, an application cannot be refused without affording the opportunity to the applicant to address you. This invitation has been given to the applicant.
- 3.16 The premises have no history of illegal gaming and there is no evidence of children playing existing machines.
- 3.17 The purpose of machines in licensed premises is for the amusement of customers, and not a major inducement to attend the premises.
- 3.18 Prior to the Licensing Act 2003 coming into force, any Section 34 Gaming Machine had by law to be sited within view of the bar to allow supervision of the machine. Whilst it is still an offence for a person under 18 years to play on a Section 34(5)(e) machine, the current law states that such a machine may be located in *"any place which, by virtue of a premises licence, may be used for the supply of alcohol and which is exclusively or mainly used for the supply and consumption of alcohol"*.

- a) There is already a condition on the Premises Licence that “No person under the age of 18 years shall be permitted to enter or remain on the premises unless accompanied by a person who is at least 18 years of age.”

3.19 Members are advised that they have unfettered discretion subject to the laws of natural justice, proportionality and reasonableness

#### 4. RISK ASSESSMENT IMPLICATIONS

4.1 Members are reminded that they should;

- follow the rules of natural justice and the spirit of the code of conduct for elected members in licensing applications.
- have read or should hear all the facts prior to making a determination.
- Give consideration to the Human Rights Act 1998, in particular – the right to peaceful enjoyment of possessions, – the right to a fair and public hearing within a reasonable time – respect for private and family life and – the right to freedom of expression.

4.2 The applicant has protected rights by way of appeal to a Crown Court from a determination by this Sub-Committee.

#### 5. CONSULTATION CARRIED OUT

5.1 None.

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Background Papers	
Document	Place of Inspection
Gaming Act 1968	<a href="http://www.opsi.gov.uk">www.opsi.gov.uk</a>
Department of Culture Media and Sport Gambling Circular 13 / 2005	<a href="http://www.culture.gov.uk">www.culture.gov.uk</a>

Appendices	
Document	Place of Inspection
Appendix A	Attached
Appendix B	Attached
Appendix C	Attached