



LICENSING PANEL

WEDNESDAY 11 MAY 2005

7.30 PM *

PANEL AGENDA (LICENSING AND GENERAL PURPOSES)

COMMITTEE ROOM 1&2
HARROW CIVIC CENTRE

* THERE WILL BE A BRIEFING FOR MEMBERS AT 7.00 PM IN COMMITTEE ROOM 1&2

MEMBERSHIP (Quorum 2)		
Chair:	(to be appointed at the meeting)	
	<u>Councillors:</u>	
O'Dell	Knowles	Branch

<u>Reserve Members:</u>		
(none)	(none)	(none)

Issued by the Democratic Services Section,
Legal Services Department

Contact: Michelle Fernandes, Committee Administrator
Tel: 020 8424 1542 E-mail: michelle.fernandes@harrow.gov.uk

***NOTE FOR THOSE ATTENDING THE MEETING:
IF YOU WISH TO DISPOSE OF THIS AGENDA, PLEASE LEAVE IT BEHIND AFTER THE MEETING.
IT WILL BE COLLECTED FOR RECYCLING.***

HARROW COUNCIL

LICENSING PANEL

WEDNESDAY 11 MAY 2005

AGENDA - PART I

1. **Appointment of Chair:**
To appoint a Chair to the Panel for the purposes of this meeting.
2. **Declarations of Interest:**
To receive declarations of personal or prejudicial interests, arising from business to be transacted at this meeting, from all Members present.
3. **Arrangement of Agenda:**
To consider whether any of the items listed on the agenda should be considered with the press and public excluded on the grounds that it is thought likely, in view of the nature of the business to be transacted, that there would be disclosure of confidential information in breach of an obligation of confidence or of exempt information as defined in the Local Government (Access to Information) Act 1985.
4. **Minutes:**
That the minutes of the meeting held on 2 March 2005, having been circulated, be taken as read and signed as a correct record.
5. **Public Questions:**
To receive questions (if any) from local residents or organisations under the provisions of Committee Procedure Rule 18 (Part 4B of the Constitution).
6. **Petitions:**
To receive petitions (if any) submitted by members of the public/Councillors under the provisions of Committee Procedure Rule 15 (Part 4B of the Constitution).
7. **Any Other Business:**
Which the Chair has decided is urgent and cannot otherwise be dealt with.
8. **Deputations:**
To receive deputations (if any) under the provisions of Committee Procedure Rule 16 (Part 4B of the Constitution).
- Enc. 9. **Application by Mr Amarjit Singh Mann of Ablethird Limited for the Grant of a Permit for the use of Amusement Machines with Prizes in Respect of the Amusement Centre to be Established at 8 St Ann's Road, Harrow, Middlesex HA1 1LG: (Pages 1 - 6)**
Report of the Director of Legal Services.

AGENDA - PART II - NIL



Meeting: Licensing Panel
Date: 11th May 2005
Subject: Application by Mr Amarjit Singh Mann of Ablethird Limited for the Grant of a Permit for the use of Amusement Machines with Prizes in Respect of the Amusement Centre to be Established at 8 St Ann's Road, Harrow, Middlesex HA1 1LG
Responsible Officer: Director of Legal Services
Contact Officer: Abiodun Kolawole
Portfolio Holder: Councillor Phil O'Dell
Key Decision: No
Status: Public

Section 1: Summary

Decision Required

Members are asked to determine the application in accordance with the guidance in Section 2 below.

Reason for report

This report gives details of the application and gives guidance to assist the Licensing Panel in reaching a decision.

Benefits

Whilst this report is in response to a request for a permit, the public safety and environmental control aspects of licensing addresses corporate issues. In particular, the quality of the environment, promotional leisure pursuits, a reduction in crime and disorder and a prosperous local economy.

Cost of Proposals

There are no financial implications for the Council relating to the consideration of this application by the Panel. However, it should be noted that if there is an appeal to the Crown Court by the applicant against the decision of the Panel then it is highly likely that the Council will have to pay the applicant's legal costs in the event of the appeal being successful.

Risks

There is a financial risk to the Authority as set out in the Costs of the Proposals above.

Implications if recommendations rejected

This is not applicable in this case.

Section 2: Report

Brief History

The premises are currently being used as a gift shop/discount retailer. Planning permission has been obtained for its future use as an amusement centre for the operation of amusement with prizes machine. The Gaming Act 1968 renders the use of gaming machines unlawful unless the machines have the benefit of a permit granted under Schedule 9 of the Act or the use of the machines falls within the exceptions provided for in the Act.

In the case of amusement places where the premises are to be devoted wholly or mainly to amusement with prize machines, the grant of a permit is at the discretion of the Local Authority, but a permit cannot be refused without giving the applicant an opportunity of appearing before the Authority or a committee of

Authority and being heard by them. It follows from this that the Authority has a duty to consider each case on its merits.

There is no power to attach conditions to the grant of a permit.

Home Office Circular No. 100/1988 points out that a local authority's discretion to refuse to grant a permit is unaffected by the fact that planning permission may previously have been obtained for the use of the premises as an amusement place. The Circular sees the discretion as entrusted to local authorities on general grounds transcending planning considerations. The Circular states that this implies that, in considering an application, an authority should take careful account of the social considerations obtained in its area. It may be, for example, that there are already sufficient amusements places in the area or that they are being over- frequented by children or young people.

A list of gaming establishments within the London Borough of Harrow is appended to this Report.

There is a right of appeal to the Crown Court against refusal to grant a permit and the Crown Court is empowered to consider the application afresh as if it had been made to the Court in the first instance.

The application states that admission to the premises will be limited to persons aged 18 or over. Paragraph 10 B of Schedule 9 to the Gaming Act 1968 states that the permit is subject to a condition that no person under 18 is admitted to the premises.

As stated above, the Panel is not entitled under the legislation to attach any other conditions to the permit. The Panel is advised to bear this point in mind when considering the representations made by the Metropolitan Police. The Panel is advised that an appropriate way of proceeding may be to seek undertakings from the applicant although the Panel should bear in mind that there will be no immediate remedy open to the Council if such undertakings are not honoured by the applicant. Any breach of undertaking by the applicant could, however, be taken into account by the Panel on any subsequent application for a grant of a new permit or renewal of the existing permit by the applicant.

If the Panel decides to grant the permit, the permit will last for a minimum period of three years as laid down by the Gaming Act 1968. Whilst it is not open to the Panel to grant the permit for a lesser trial period the permit can be granted for such longer period as the Panel may determine.

Objections to the Application

There has been an objection from a Mr John Rowland Burkitt and a copy of the objection appears in the Appendix. He will be represented at the hearing by Messrs Poppleston Allen, a firm of licensing solicitors. A copy of the letter from the Metropolitan Police also appears in the Appendix. Although it is not an objection as such, it is something the Panel should take into account. When doing so the Panel should refer back to Section 2 of this Report.

The Application

The applicant has made a written submission in support of the application supported by documentation and this appears in the Appendix to this report.

Options considered

This section is not applicable.

Consultation

The Council has consulted with the Metropolitan Police and the result of that consultation is set out in the Appendix to this Report.

The Environmental Health Services Department have made no observations other than to confirm that in early March the premises was a clothing shop.

The relevant Ward Councillors will be sent a copy of the Agenda five days before the meeting.

Financial Implications

There are none but please refer to the Costs of Proposals Section above.

Legal Implications

In addition to determining the application in accordance with the legislation, members of the Panel must have also regard to the provisions of the Human Rights Act 1998. In addition, clear reasons for either the refusal to grant the permit or requesting undertakings from the applicant would have to be given to the applicant by the Licensing Panel.

Equalities Impact

There are no implications.

Section 3: Supporting Information/ Background Documents

The Appendix to this Report containing :-

1. Application for grant of permit.
2. Applicant's submissions dated 2nd March 2005 and 22nd March 2005 and supporting documentation. (The supporting document (blue booklet) is enclosed separately with the agenda and labelled accordingly.)
3. Submission from J.R. Burkitt and three Appendices. (enclosed separately with the agenda and labelled accordingly.)
4. Letter from the Metropolitan Police dated 26th November 2004.
5. List of Establishments within the London Borough of Harrow with Gaming Permits Current and Expired.

(Please note that due to the volume of paper Appendix 2 & 3 are being sent to the Panel Members only)

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GAMING ACT 1968
Section 34

Application for {grant} {renewal} of permit for the use of machine for gaming by way of amusement-with-prizes, for the purpose of section ~~{34(1)}~~ {34{5E}} of Gaming Act 1968

To the **London Borough of Harrow**

Mr Amarjit Singh Mann

Of **Ablethird Limited 102 Queensway, Bletchley, Milton Keynes**

HEREBY APPLY for the {grant} {renewal} of a permit for the use of machines for gaming for the purposes of section ~~{34(1)}~~ {34{5E}} of the Gaming Act 1968 on the premises know as

8 St. Anns Road, Harrow, Middlesex, HA1 1LG

Within the district of the above-named local authority, of which premises I {am} {propose, if the permit is granted, to become} the occupier.

The premises {are} {will be} established and conducted for the purposes of

AMUSEMENT CENTRE WITH ALL CASH AWP MACHINES

And it is proposed to use machines of the following types:

{all-cash amusement-with-prizes machines} **No Limit**

{other amusement-with-prizes machine} **Nil**

{amusement machine} **Nil**

{Admission to the premises will be limited to persons aged 18 or over}

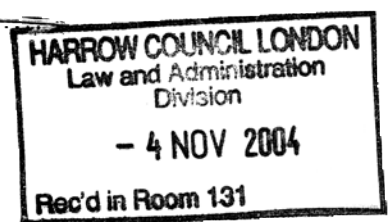
{I understand that, if granted, the permit will be subject to the conditions set out in paragraph 10B of schedule 9 to the Gaming Act 1968 and that where applicable there will be other conditions for designated area as set out in paragraph 10B {3}{b} of that schedule.}

I undertake to observe the statutory conditions applicable.

I enclose the sum of **£250.00**, being the fee payable on this application.

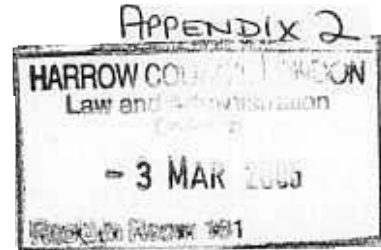
Dated 14/10/04

Signed 





Picton Jones & Co
PROPERTY CONSULTANTS



Mr Adrian George
Solicitors Department
Harrow Borough Council
PO Box 2
Civic Centre
Station Road
Harrow
HA1 2UH

Our Ref: HPJ/SJS
2nd March 2005

Dear Mr George

**RE: APPLICATION FOR SECTION 34 (5E) PERMIT
8 ST ANN'S ROAD, HARROW
APPLICANT: ABLETHIRD LTD**

Further to my brief telephone conversation with you earlier this week, I set out below a summary of the essential changes that have occurred in Gaming in the licensing of Amusement Centres, particularly in relation to adequacy, provision and demand.

Under the provisions of the Gaming Act 1968 the licensing of Amusement Centres was left to the discretion of Local Authorities.

Unlike all other forms of Gaming (Casinos, Betting Shops and Bingo Halls) there was no requirement to prove un-stimulated demand for the Amusement Centre in order to justify the grant of a Permit.

The discretion of a Local Authority is however unfettered and some Local Authorities have in the past required an applicant to address the question of need.

In the case of **Birmid Leisure Ltd v Birmingham City Council, Birmingham Crown Court – 16th February 1988**, the Local Authority argued that there was no need for a further Amusement Centre. After hearing the evidence, the Judge determined:

“Firstly the Applicants are suitable people to conduct this kind of business, secondly it is accepted that the premises are suitable premises and thirdly --- there would no harmful consequences in relation to social, moral or public order matters if the application were granted.

“We ask ourselves this question, how would the man in the street view a decision which told him this. Birmid Leisure Ltd are suitable Applicants and have suitable premises. There would be no harm done morally,



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socially or in terms of public order if they were able to provide this facility, but nonetheless they cannot do so”.

It seems to us the public would listen to such reasoning with some astonishment and they would be right.

In the closely related field of **Liquor Licensing**, the Justices’ Clerks Society’s “Good Practice Guide” of 2002 stated in paragraph 3.27, page 39:

“We RECOMMEND that when considering the question of need/demand Committees do not attach much, if any, weight to the threat from competition and should not consider trade objection as being a matter which is relevant when exercising their discretion on a application for the grant of a new Justice’s license --- We consider that in isolation the issue of sufficiency of premises should carry little or no weight in determining applications for new licences and that the issue of need should be seen in the context of public safety and of protecting the public against nuisance and disorder”.

We recommend that the following criteria for the grant of a Justices’ Licence be adopted by Committees:

- a) The premises are suitable or convenient having regard to their location, their character and condition, the nature and extent of the proposed use of the persons resorting or likely to resort to the premises.*
- b) The use of the premises would not cause or is not likely to cause a public nuisance or threat to public order or public safety.*
- c) The Applicant is a fit and proper person.*
- d) That are a number of premises in the area will not be so numerous so as to lead to problems with noise and disturbance or disorder.*

In relation to harder forms of Gaming, such as Casinos, Bingo Halls and Betting Shops there is at the present time a statutory requirement for an Applicant to prove need (paragraph 18 of Schedule 2 of the Gaming Act 1968).

The **1999 Report of the Gaming Board**, pointed out that the Law relating to Gaming was enacted 30 years or more ago and because of the cultural and technological changes that have occurred are now in significant respects out of date. Attitudes towards Gambling have become generally more relaxed as witnessed with the Government sponsored and heavily promoted National Lottery – the Policy on unstimulated demand looks increasingly threadbare.

This view was reinforced by the recent Budd Report which pointed out that in its submission to the Gambling Body Review the Gaming Board had said that it did not believe that the demand criterion should be retained. They argued that the:

“test has largely become an academic exercise, involving sometimes convoluted lengthy and artificial arguments about the meaning of particular figures and over-witness evidence.”

The Gambling Review Body agreed that the demand criteria was outdated and reflected an era when Gambling was not something people were expected to want to do. It went on to conclude:

“Demand is best assessed by operators’ commercial instincts. Some operators will be prepared to run on smaller margins than others.”

It went on to state:

“The main effect of the existing demand tests is to stifle competition. That is not desirable and it would not be a proper role for a Local Authority. The Local Authority is not there to second guess the commercial judgement of the operator”

They went on to recommend that each application should be considered on its own merits. The Authority should have regard to the existing Gambling provision but that should not by itself be a valid reason for refusal (paragraph 44).

It is clear from the evolution of the Law in relation to Gaming that the approach to the question of demand today is totally different to what it was 35 years ago when people took a much more moral stance in respect of gambling.

If there are social problems then one may look at demand. There certainly can be no moral issue over children or youngsters due to the change in the Law in 1996 when the introduction of Section 34 (5e) excluded them from establishments licensed under that section.

They recommended that the demand test criterion should be abolished for both Casinos, Bingo Halls and Betting Shops. (There was no demand test criterion in the Act in relation to Amusement Centres).

The Budd Report went on to recommend that the Licensing of Gambling premises should be undertaken by Local Authorities.

With regard to the location of Gaming establishments close to homes, Schools or Churches, the Budd Report stated:

“Not suggesting moral judgements alone should determine where Gambling is permitted. The Local Authority --- must take a balanced and reasonable view of all the facts.”

The Budd Report went onto recommend that:

“In determining whether the location for gambling premises is appropriate the Local Authority should have regard to the general character of the locality and the use to which buildings nearby are put.”

This is given to you for your own benefit and I trust that the same will not be disclosed to any Third Party.

Yours sincerely




Hugh Picton Jones
PICTON JONES & CO
hpj@picton-jones.co.uk





Picton Jones & Co
PROPERTY CONSULTANTS



Mr Adrian George
Solicitors Department
Harrow Borough Council
PO Box 2
Civic Centre
Station Road
Harrow
HA1 2UH

Our Ref: HPJ/SJS
22nd March 2005

Sent by Fax and Post
Fax. No. 0208 424 1557

Dear Mr George

**RE: PERMIT APPLICATION BY ABLETHIRD LTD
BETTING GAMING LOTTERIES ACT 1968
PREMISES: 8 ST ANN'S ROAD, HARROW**

As requested I set out below some material considerations in support of my client's application.

THE APPLICANT

Ablethird Ltd is a Private Limited Company established in March 1988 to take over the Amusement Centre interest of Mr A S Mann, the Managing Director and sole shareholder.

The Company is a substantial company operating throughout The Midlands and South East. They also have substantial property investment interests.

The company operate their Amusement Centres under the name of Agora. The company have received no complaints regarding the operation of their establishments and they have never had the renewal of a Permit objected to or refused.

They currently operate Inland shopper orientated Amusement Centres in 37 locations and also hold a Section 34 (5e) Permit from your Authority in respect of their premises at High Street, Wealdstone.

THE PREMISES

The appeal premises are located on the Northern frontage of St Ann's Road, some 20 metres from its junction with Station Road and consists of the ground floor of a 4 storey terraced Victorian building of brick and slate construction with protruding bay windows at first floor level.



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Picton Jones & Co (Property Consultants) Ltd. Dirs: H. Picton Jones, B.Sc. (Est. Man.), F.R.I.C.S. Guy W. Collin B.Sc. (Est Man.), M.R.I.C.S.
Associate: Rachel Picton Jones, B.Sc. (Hons) M.R.I.C.S.

The premises have an overall frontage to High Street of 5.79 metres, a depth of 17.7 metres, an internal width of 5 metres and depth of 15.7 metres.

The property is located within the designated Key Shopping Frontage of Harrow Town Centre.

In the event of a Permit being granted the premises will be extensively refurbished, including the provision of a new shop front and high quality fit out, including insulation to ensure that the amenities of nearby residential occupiers is not harmed.

LOCALITY

Harrow Town Centre is the largest shopping centre in the Borough and one of ten Metropolitan Centres within Greater London. The Town Centre has experienced significant changes with the completion of the St Ann's Shopping Centre in 1980 and St George's Shopping Centre in 1996, which together with the pedestrianisation of St Ann's Road has resulted in major re-orientation of pedestrian flows and a reduction in shopping activity and flows in Station Road.

Today St Ann's Road is the primary focus of shopping activity where one finds the vast majority of multiple retailers located.

PLANNING PERMISSION

Planning Permission has been granted on appeal for change of use of the premises from a Retail Shop to an Amusement Centre, subject to the imposition of seven conditions, all of which it is the intention of the Applicant to comply with.

PROPOSAL

Ablethird Ltd propose to open a shopper orientated Amusement Centre providing Amusement With Prizes and ancillary snack bar, prize bar and retail sales counter. The windows would be utilised for display purposes and will include a range of porcelain fancy goods and limited edition statuettes.

The use is non-sessional and provides casual amusement and relaxation for adult shoppers and other adults in the vicinity, a range of AWP machines (fruit machines) will be provided. No Amusement Only machines will be installed.

The Applicants are members of BACTA and propose to comply entirely with their Code of Conduct.

STAFF

There will be a total of eight staff employed, on a two shift basis with four on duty at any one time, all of whom will be trained to undertake their responsibilities effectively and to comply with the Law.

ADEQUACY OF PROVISION

Amusement With Prizes is the most minor form of gaming licensed under the Gaming Act 1968 and the licensing of the same was left to Local Authorities.

There are at the present time, two Amusement Centres in Harrow the nearest being Nobles t/a Sun Valley at 312 Station Road, while there is a further Amusement Arcade t/a The Leisure Exchange at No. 365 Station Road.

The Sun Valley Amusement Centre is comparable to the proposal by Agora but is located on the eastern frontage of Station Road.

The Leisure Exchange establishment is somewhat different.

A brief explanation of the evolution of Gaming Law will be given, together with Case Law.

OBJECTORS

The views of Objectors will be examined and commented upon in full.

SUMMARY

It will be pointed out that the:


1. Applicant is a fit and proper person.
2. The premises are suitable.
3. There is no evidence of any social problems associated with this form of use.

I understand that you have received no complaints in respect of my clients establishment in Wealdstone or indeed Nobles in Station Road, Harrow.

With regard to the objectors request for a postponement, my client is not prepared to agree to this as the matter has been awaiting determination for some considerable time.

We request that the Permit is granted

Yours sincerely


Hugh Picton Jones
PICTON JONES & CO
hpj@picton-jones.co.uk

LIST OF DOCUMENTS

PJ1 Location Plan

Photographs of Appeal Site and General Street Scene

Plans showing internal layout and proposed shop front

Photographs of Agora's existing Amusement Centres

Copy of Formal Planning Permission granted on Appeal.

PJ6 Letters from Police Authorities

Letters from Licensing Authorities

Survey of Traders adjoining Agora Amusement Centres

PJ9 Plans of other towns showing proximity of Amusement Centres

a) Ablethird's subscription invoice from BACTA

b) BACTA Code of Conduct

a) Gamcare Poster

b) Photographs of Gamcare Posters in Agora Amusement Centres

We reserve the right to produce additional survey evidence or other documentation in support of the application.

***Your Reference:**

Our Reference: 21/227/04/QA

Date: 26th November 2004



Ms Michelle Fernandes
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Middx
HA2 ODN

METROPOLITAN POLICE
Harrow Station
74 Northolt Road
South Harrow
Middlesex HA2 ODN
Telephone 020 8423 1212.
Direct Line 020 8733 3415.

Dear Ms Fernandes

Re : 8 , St Anne's Road – Application for a S.34 Permit

Further to you letter of 15th November 2004 I would like to make the following observations.

This Borough and other outer London Boroughs have for a number of years been suffering from a rash of burglaries of public houses and thefts from amusement arcades where the A. W. P. machines have been the targets.

As a means of trying to combat these crimes I am asking the Liquor licensing Magistrates at each Licensing sessions at the Magistrates Court to refuse the renewal of S.34 permits unless the Licensee makes a number of undertakings on oath.

These include

- 1) police approved alarm system
- 2) CCTV – on machines as well as general
- 3) removal of takings every night or
- 4) fitting of approved security device (Police Crime reduction officer can supply examples)

If the premises is subsequently burgled and any of the above has not been complied with then the applicant would thus be in breach of the licence and we will ask it be revoked.

It goes without saying that licensed premises should be one of the more robust premises and that in order to combat crime we would not wish A.W.P.'s to be found in premises that does not at least match their level of security.

List of Gaming Applications Current and Expired

Name	Premises Name and Address	Type of License & Issue Number	Expiry Date	Status
65, High Street				
	Carousel 65, High Street Wealdstone	S34 – No. 138	6 October 1995	Expired
	65, High Street Wealdstone	S34(5E)– No. 004	30 June 1999	Expired
Ablethird Ltd	65, High Street Wealdstone	S34(5E)– No. 009	16 August 2007	Current Licence
312, Station Road				
	312, Station Road Harrow HA1 2DX	S34(5E)– No. 003	30 June 2005	Current Licence
	312, Station Road Harrow HA1 2DX	S16– No. 001	28 March 2005	Current Licence
365, Station Road				
	Quicksilver, 365, Station Road Harrow HA1 2AW	34(5E) No. - 005	30 June 1999	Expired
	Quicksilver, 365, Station Road Harrow HA1 2AW	S16, Schedule 3 No. - 003	28 July 2000	Expired
	365, Station Road Harrow HA1 2AW	S34(5E) Schedule 9 No. - 009	15 November 2004	Current Licence
	365, Station Road Harrow HA1 2AW	S34(5E) No. - 007	22 July 2006	Current Licence
Various other Premises				
	Harrow School Staff Sports and Social Club 25, High Street Harrow on the Hill	S34 – No. 168	22 August 1997	Expired
	Carousel 237, Station Road Harrow	S34 – No 164 S16 – No 1 S34 – No 190	27 April 1994 1 September 1996 1 September 1996	Expired Expired Expired
	The Corner Café 48, South Parade Mollison Way Edgware Middx, HA8 5QL	S34	28 August 2006	Current Licence

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