

## LONDON BOROUGH OF HARROW

<b>Meeting:</b>	<b>LICENSING PANEL</b>
<b>Date:</b>	<b>28<sup>th</sup> AUGUST 2003</b>
<b>Subject:</b>	<b>APPLICATION FOR THE GRANT OF A PERMIT FOR AN AMUSEMENT MACHINE WITH PRIZES IN RESPECT OF THE EASYBITE CAFÉ AT 48 SOUTH PARADE, MOLLISON WAY, EDGWARE, MIDDLESEX HA8 5QL</b>
<b>Responsible Chief Officer:</b>	<b>BOROUGH SOLICITOR</b>
<b>Relevant Portfolio Holder:</b>	<b>COUNCILLOR PHIL O'DELL</b>
<b>Status:</b>	<b>PART 1 (PUBLIC)</b>
<b>Ward:</b>	<b>EDGWARE</b>
<b>Enclosures:</b>	<b>APPLICATION, PREVIOUS PERMIT, CORRESPONDENCE WITH THE APPLICANT AND CORRESPONDENCE WITH THE METROPOLITAN POLICE.</b>

### **1. SUMMARY**

1.1 This report gives details of an application for the grant of a permit for the use of a machine for gaming by way of amusement with prizes "(AWP)" under Section 34 of the Gaming Act 1968. The report gives guidance to assist the Licensing Panel in reaching a decision. The application is referred to the Panel for the reasons set out in 1.2 below.

### **1.2 THE RELEVANT LEGISLATION**

1.2 The premises is described by the applicant as a working man's café providing traditional English breakfast. It contains an amusement with prizes machine for the amusement of customers while their breakfast is being cooked.

1.3 Powers are available to the Council within Schedule 9 of the Gaming Act 1968 to introduce a general policy of not licensing certain classes of premises for the grant or renewal of permits for the establishment and use of machines for amusement with prizes.

1.4 Some time prior to 1990 the Council's General Public Services Committee identified those classes of premises where unaccompanied children were likely to be frequent visitors as a potential class of premises within any such Resolution. Once such a policy is adopted the Council assumes the duty to refuse all applications under Section 34 in respect of those classes of premises without exception. Classes of premises not specified would remain outside the policy prohibition and applications would continue to be considered on their merits in respect of them.

1.5 On 18<sup>th</sup> October 1990 the Council adopted a resolution made pursuant to Schedule 9 paragraph 3(b) of the Gaming Act 1968 in the following terms:

That the Council adopt a policy that it would not grant new permits or renew current permits under Section 34 of the Act for the licensed use of machines for amusement with prizes in respect of any or all of the following classes of premises within the London Borough of Harrow :-

Garages and/or petrol filling station forecourts; car wash stations; bus stations; railway stations; retail shops; cafes, restaurants and take-away food premises; launderettes; hairdressers; school premises; showrooms; places of entertainment; hotels; guest houses and hostels; and areas to which the public have access in offices or other work places, including waiting rooms or reception areas.

1.6 On 16<sup>th</sup> June 1994, the Council's Environmental Services Committee amended the Resolution to add "sports complex" as a class of premises which is ineligible for the grant or renewal of a permit under Section 34 of the Act for the licensed use of machines for amusements with prizes.

1.7 Notwithstanding the fact that the Council has adopted the above mentioned Resolution, it is still permissible under the terms of the Act for the holder of a permit to apply to the Council for that permit to be renewed. Similarly an application for the grant of a permit can be made.

1.8 Further, by virtue of Schedule 9 paragraph 7 of the Act, the Council is under a duty to refuse to grant a permit if:

- i) the premises to which the application relates falls within one of the classes of premises stated in the above mentioned Resolution; and
- ii) the permit could not be renewed without contravening the Resolution.

1.9 Given that the premises in question is a cafe there is a possibility that the grant of this application would contravene the above mentioned Resolution. In order to assist members of the Panel in determining the application, the applicant has been invited to appear before the Panel

in order to make representations, as is his right, where there is a risk of the application being refused.

- 1.10 Members of the Panel will be aware from recent officer briefings that the Government is actively considering changes to Gaming Legislation. Although detailed consultation on the proposed new role for local authorities is expected in the autumn, it is clear from the information released so far that all such gaming machines will (except perhaps those in casino premises) come under the control of the Local Authority. Local Authorities are also likely to issue a premises licence for those premises (including any casinos) where gaming/gambling takes place in the Borough. It is expected that the proposals will be modelled on the Licensing Act 2003, and the level of individual discretion by authorities will be limited. The future status of the earlier resolutions by this Authority cannot at this stage be determined. Officers will keep members abreast of developments.
- 1.11 Currently, gaming machines in premises licensed for the sale of alcohol are issued with permits by the local Licensing Justices. The Licensing Act 2003 amends the Gaming Act 1968, abolishing this role of the Justices and from the date of the full implementation of the Act (expected January 2005), this will become the responsibility of the Local Authority. It was only by virtue of close reading of the text of the published Act that this unreported new duty was revealed.
- 1.12 The application is also referred to the Panel for a decision because of the background to this matter as set out at 6 below.

<b>2. RECOMMENDATIONS (for decision by the Panel)</b>
---

<b>2.1 Members are asked to determine the application in accordance with the guidance in section 9 below.</b>
---

### **3. CONSULTATION WITH WARD COUNCILLORS**

- 3.1 Councillors Davine, Burchell and Lent will be sent a copy of the Agenda five days before the meeting.

### **4. POLICY CONTEXT AND RELEVANT PREVIOUS DECISIONS**

- 4.1 Resolution of the General Public Services Committee on 13<sup>th</sup> September 1990 and adopted by Council on 18<sup>th</sup> October 1990.
- 4.2 Resolution of the Public Entertainment's Licensing and Safety Panel on 24<sup>th</sup> March 1994.
- 4.3 Resolution of the Public Entertainments Licensing and Safety Panel on 27<sup>th</sup> September 1995.

## **5. RELEVANCE TO CORPORATE PRIORITIES**

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

## **6. BACKGROUND INFORMATION AND OPTIONS CONSIDERED**

- 6.11 A permit in respect of the premises was granted by the London Borough of Brent on 2<sup>nd</sup> September 1992. The permit was due to expire on 1<sup>st</sup> September 1995. On 1<sup>st</sup> April 1994 the Borough boundary changed to incorporate areas which had previously been administered by the London Borough of Brent. These premises were one of a number of commercial and residential premises which transferred from the London Borough of Brent to the London Borough of Harrow.
- 6.12 On 27<sup>th</sup> September 1995 The Council's Public Entertainment's Licensing and Safety Panel considered an application for a renewal of the permit by the then existing permit holder Mr Pandya.
- 6.13 The Panel, in determining its decision, referred to the reasons outlined in the recommendation to the Council on 13<sup>th</sup> September 1990 that formed the basis for the policy adopted in October 1990. This policy was influenced by growing concern about the general availability of amusement machines with prizes in premises that were habitually frequented by unsupervised children and young persons. It was believed that easy access to such machines could afford unsupervised children and young persons the opportunity to acquire a habit for gambling.
- 6.13.1 At the meeting, the applicant reported that the café was predominantly frequented by workmen and was closed before the end of the school day. Further it was noted that the nearest school was some 20 to 15 minutes away and that no unsupervised children entered the premises.
- 6.14 The applicant gave an undertaking at the meeting to ensure that the gaming machine was not used by young people under 16. He also agreed to display a sign in a prominent place informing customers that unaccompanied children would not be admitted into the café. Members therefore believed that it was unlikely that unaccompanied children would frequent the café and therefore that granting the permit would not contravene the Resolution.

- 6.15 It was also reported at that meeting that neither the Head of Environmental Health Services nor the Metropolitan Police objected to the application. As a result, the Panel resolved to renew the permit as the Panel believed that the premises fell outside the scope of the Resolution as it was unlikely that the premises would be habitually frequented by unaccompanied children and young people. However, the Panel imposed a condition that a sign should be displayed in a prominent place in the premises informing customers that unaccompanied children and young persons would not be admitted. The Panel also made the applicant's undertaking referred to above a condition of the renewal.
- 6.16 On 27<sup>th</sup> September 1998 the permit held by Mr Pandya expired.
- 6.16.1 In December 1998 the current applicant Mr Sam Yadav, on behalf of Easybite Limited, took over the running of the business on the premises. He has stated in correspondence that neither the previous owner nor his solicitor told him about the renewal date and he did not realise the significance of the renewal of the permit. He therefore did not apply to renew the permit until 16<sup>th</sup> October 2002.

## **7 ADDITIONAL INFORMATION**

- 7.11 An officer from the Council's Environmental Health Services Department visited the premises on 19<sup>th</sup> May 2003. He reports that the premises is situated at the corner of Mollison Way, Edgware and Laurence Crescent. It is a glazed shop front with a single entry/exit door in the middle of the frontage.
- 7.12 The café has 36 covers and the main and only trade is as a builder's café in the mornings providing traditional English breakfast. The café opens at 7 am and closes at 2.45 pm except on Sundays when it is closed all day.
- 7.13 The amusement with prizes machine is placed next to the door directly opposite the till area. This is in direct line of sight from the till area which is always manned according to the applicant. The café employs two additional staff for cooking and cleaning when it is open.
- 7.14 There are notices on display in the premises stating that "no under 18's to use the AWP". There is also a notice saying that the machine is emptied every afternoon before the shop is closed. The cash bins from the machine are also removed from the machine and placed on the tables at close of business.
- 7.15 The Environmental Health Services Officer was informed by the applicant during his visit that the type of food served at the café does not attract youngsters and that he has never had any complaints regarding the misuse of the AWP in the last 4 years.

## **8 OBJECTIONS TO THE APPLICATION**

- 8.11 There have been no objections as such. However, the views of the Metropolitan Police have been sought and a copy of the relevant correspondence is attached at Appendix A.
- 8.12 The Council's Environmental Health Department have not received any complaints about the premises.

## **9 DETERMINATION OF THE APPLICATION**

- 9.11 In respect of the application the Panel has the following options open to it:-
- a) If the Panel considers that the permit could not be granted without contravening the resolution passed by the Council in 1990 the Panel is required by the legislation to refuse to grant the permit.
  - b) If the Panel decides that the permit could be granted without contravening that resolution Paragraph 8(2) of Schedule 9 to the Act says that the grant of the permit shall be at the discretion of the Panel; and in particular, and without prejudice to the generality of that discretion, the Panel may refuse to grant the 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 or are to be used, it is undesirable that machines to which Part III of the Act applies should be used for providing amusements on those premises.
  - c) Paragraph 10 of Schedule 9 to the Act provides that on granting a permit in respect of any premises the Panel may grant it subject to a condition limiting the number of AWP machines which may be available for gaming on the premises to such number as the Panel may determine.
  - d) It follows from what is stated at c) above that the Panel are not entitled under the legislation to attach any other condition 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.

9.12 It should be noted with the options above that:

- a) Clear reasons for either the refusal to grant the permit or requesting undertakings from the applicant would have to be given to the applicant.
- b) If the Panel decide to refuse to grant the permit the applicant will have the right to appeal to the Crown Court unless the Panel refused to grant the permit because it decided that the premises falls within those classes of premises within the 1990 resolution.
- c) If the Panel decide to grant the permit the permit will last for the 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.

## **10 FINANCE OBSERVATIONS**

10.1 There are no financial implications for the Council relating to the consideration of this application by the Panel.

## **11 LEGAL OBSERVATIONS**

11.1 In addition to determining the application in accordance with the legislation, Members of the Panel must also have regard to the provisions of the Human Rights Act 1998.

## **12 BACKGROUND PAPERS**

12.1 File for Easybite Café trading as the Corner Café, 48 South Parade, Mollison Way, Edgware, Middlesex HA8 5QL.

## **13 AUTHOR**

13.1 Adrian George, telephone no. 020 8424 1979.

# APPENDIX A