

Item No 5.



Walsall Council

REPORT OF THE DIRECTOR OF PUBLIC HEALTH

LICENSING SUB – COMMITTEE

29 March 2023

**APPLICATION FOR A PREMISES LICENCE UNDER
SECTION 159 OF THE GAMBLING ACT 2005**

**Admiral
9-11 Park Street
Walsall
WS1 1LY**

1.0 Summary of Report

- 1.1 The purpose of this report is for the Licensing Sub-Committee to consider and determine an application for a premises licence, authorising the use of 9-11 Park Street, Walsall, WS1 1LY as an Adult Gaming Centre, under the provisions of the Gambling Act 2005 (The Act).
- 1.2 The application is made by Luxury Leisure, Fifth Avenue Plaza, Queensway, Team Valley Trading Estate, Gateshead, Tyne & Wear, NE11 0BL.
- 1.3 In accordance with Section 162(1)(a) of the Gambling Act 2005, the application must be determined by the Licensing Sub-Committee, where representations have been made by an interested party or responsible authority under Section 161, and not been withdrawn.

2.0 Recommendations

- 2.1 That the Licensing Sub-Committee determine whether to the representations received are relevant, if so then to:
 - grant the licence as applied for;
 - grant the licence with additional modified conditions; or
 - reject the application.

3.0 Application

3.1 An application for an Adult Gaming Centre premises licence was received from Luxury Leisure on 23 August 2022.

3.2 *Application Form*

The application form is attached at **Appendix 1**.

3.3 *Hours of Operation*

The application does not detail hours of operation as there are no statutory restrictions on opening hours for Adult Gaming Centres.

3.4 *Plans*

The location map and licensing plan of the premises are attached as **Appendix 2**.

3.5 *Prescribed Advertising Requirements*

In their letter of 23 August 2022, the applicant confirmed in that the prescribed requirements of section 160 of the Gambling Act 2005 had been complied with. The letter is provided as **Appendix 3**.

Section 160 of the Act requires that notice of application be given in three ways:

3.6a notice must be placed outside the premises for 28 consecutive days in a place where it can be read conveniently;

3.7 in a newspaper or newsletter of local relevance, on at least one occasion within ten days of the application being made; and

3.8 the notice must be served on all responsible authorities with seven days of the application being made.

3.9 Paragraph 3 of Appendix 3 outlines the intention of the applicant, should this application be successful, to relocate their existing Walsall-based business and surrender the current premises licence.

As you know, we have long operated another site within Walsall through our company Talarius Ltd: Admiral, 2A-3A Bradford Street, Walsall, WS1 1NX. If the current application is granted, we will close the existing site and surrender the existing premises licence once we have transferred the business to the new site.

3.10 Also detailed in the Appendix 3 is a list of the voluntary measures proposed by the applicant to support and evidence compliance with the licensing objectives. A full list of the measures is provided on pages 2 – 4 of the letter, but in summary, these include:

Prevent gambling being a source of crime and disorder, being associated with crime and disorder, or being used to support crime:

- Local Area Risk Assessment – Local knowledge mapping
- Installation and operation of CCTV
- Controlled security entry system for later hours
- At least two members of staff on duty at any time
- Easy access to emergency contact details – also displayed within premises
- Regular security reviews with Police Crime Reduction Officer, on request
- Refusal policy for intoxicated persons (both alcohol and drugs)
- Lighting inside and outside premises designed to deter conflict and organised crime and disorder
- Staff equipped with portable alarm activators and premises fitted with live monitored hold-up alarm

Ensure gambling is conducted in an open and fair way:

- Although primarily a matter for the Gambling Commission, the applicant confirms that the layout, lighting, and fitting out of the premises will provide good lines of sight and ensure the objective is supported.
- Management measures and procedures are detailed and transparent, supporting this objective, with all codes of practice issued by the Gambling Commission being adhered to.

Protect children and vulnerable persons from being harmed or exploited by gambling:

- Definition of 'vulnerable' is that suggested by the Gambling Commission
- Protection measures detailed in the Local Area Risk Assessment explained below and attached as Appendix 6.
- Layout, lighting and fitting out of the premises intended not to be attractive to children and vulnerable people
- Challenge 25 age verification policy adopted, staff trained in its implementation, and appropriate signage displayed within the premises
- Third-party independent test purchasing organisation, Serve Legal, employed to conduct unannounced test purchases of all age restricted sites
- Record of refusals maintained and reviewed regularly
- Continuous control and observation of the gaming floor, including interactions and engagement with customers by staff trained to recognise signs of vulnerability.
- Implementation of a self-exclusion scheme

- I-beacon technology adopted to operate the GambleWise app for customers who wish to manage time spent inside the premises
- Leaflets and posters promoting available help in relation to gambling harms.

3.11 **Advertising**

The display of the notice on the premises and the publication of the newspaper notice ensure that any 'interested parties' are made aware of the application and of their opportunity to make comments to the licensing authority.

3.12 'Interested parties' includes those living sufficiently close to the premises to be likely to be affected by authorised activity, or persons having business interests that could be affected by the authorised activities.

3.13 In respect to of this application, a copy of the newspaper advertisement, published in the Express and Star on 25 August 2022, is attached as **Appendix 4** and the notice of application, attached as **Appendix 5**, was displayed on the premises for 28 consecutive days, from 23 August to 19 September 2022.

3.14 **Local Area Risk Assessment (LAR)**

To improve the exchange of information between licensing authorities and operators, the Gambling Commission introduced Social Responsibility provisions, requiring operators of premises-based businesses to conduct local risk assessments to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises.

3.15 The Local Risk Assessment (LAR) is required to inform the premises' policies, procedures and control measures to mitigate those risks. The LAR provided with the application is attached at **Appendix 6**.

3.16 The Social Responsibility Policies and Procedures and procedures submitted with the application are provided as **Appendix 7**, together with supporting information about the corporate Personal Development Plan also within **Appendix 7**.

3.17 The application was valid, having met the application requirements specified in Section 159 of the Act.

4.0 **Representations**

4.1 Under Section 160, an interested party or responsible authority may make representations, which must be received by the licensing authority within the prescribed consultation period of 28 days.

- 4.2 In response to this application, no representations were received from any responsible authorities.
- 4.3 As mentioned, Section.158 of the Act defines interested parties as including persons who live sufficiently close to the premises to be likely to be affected by the authorised activities, or who have business interests that might be affected by the grant of the application.
- 4.4 Under s.162 of the Act, licensing authorities are required to filter all representations they receive under the to ensure they identify those that are relevant, and those that are irrelevant.
- 4.5 Representations that are likely to be deemed relevant by licensing authorities are those that relate to at least one of the licensing objectives. They may also be found relevant if they raise issues of concern connected to the content of the licensing authority's own statement of policy or any of the Commission's guidance or codes of practice. This is set out at s.153 of the Act.
- 4.6 Under section 1 of the Gambling Act 2005, the three licensing objectives, which guide the way that the licensing authorities perform their functions and the way that gambling businesses carry on their activities, are:
- 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; and
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 4.7 Four written representations were received from 'interested parties', which are attached at **Appendix 8**.

The representations are all made on the grounds that the grant of the application could undermine the licensing objective of 'preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime', by increasing anti-social behaviour in the area.

5.0 Resource Considerations

5.1 **Financial:** Application fees are set by the Licensing Authority.

5.2 **Legal**

5.2.1 *Section 163 – Determination of application*

(1) On considering an application for a premises licence (whether at a hearing or not) a licensing authority shall —

- (a) grant it, or
 - (b) reject it.
- (2) A licensing authority shall not determine an application for a premises licence made in reliance on section 159(3)(b) until the relevant operating licence has been issued (in a form which authorises the applicant to carry on the activity in respect of which the premises licence is sought).

5.2.2 Section 164 – Grant of application

- (1) Where a licensing authority grants an application for a premises licence they shall, as soon as is reasonably practicable—
- (a) give notice of the grant to—
 - (i) the applicant
 - (ii) the Commission,
 - (iii) any person who made representations about the application under section 161,
 - (iv) in England and Wales, the chief officer of police for any area in which the premises are wholly or partly situated,
 - (v) in Scotland, the chief constable of the police force maintained for a police area in which the premises are wholly or partly situated, and
 - (vi) Her Majesty's Commissioners of Customs and Excise,
 - (b) issue a premises licence to the applicant, and
 - (c) give the applicant a summary of the terms and conditions of the licence in the prescribed form.
- (2) A notice under subsection (1)(a) —
- (a) must be in the prescribed form,
 - (b) if the licensing authority have attached a condition to the licence under section 169(1)(a) or excluded under section 169(1)(b) a condition that would otherwise have attached by virtue of section 168, must give the authority's reasons, and
 - (c) if representations were made about the application under section 161, must give the authority's response to the representations.
- (3) In this section “prescribed” means—
- (a) in relation to authorities in England and Wales, prescribed by regulations made by the Secretary of State, and
 - (b) in relation to authorities in Scotland, prescribed by regulations made by the Scottish Ministers.

5.2.3 Section 165 – Rejection of application

- (1) Where a licensing authority reject an application for a premises licence they shall, as soon as is reasonably practicable, give notice of the rejection to—
 - (a) the applicant,
 - (b) the Commission,
 - (c) any person who made representations about the application under section 161,
 - (d) either—
 - (i) in England and Wales, the chief officer of police for any area in which the premises are wholly or partly situated, or
 - (ii) in Scotland, the chief constable of the police force maintained for a police area in which the premises are wholly or partly situated, and
 - (e) Her Majesty's Commissioners of Customs and Excise.
- (2) A notice under subsection (1)—
 - (a) must be in the prescribed form, and
 - (b) must give the authority's reasons for rejecting the application.
- (3) In this section “prescribed” means—
 - (a) in relation to authorities in England and Wales, prescribed by regulations made by the Secretary of State, and
 - (b) in relation to authorities in Scotland, prescribed by regulations made by the Scottish Ministers.

5.2.4 Section 169 – Conditions imposed or excluded by the licensing authority

- (1) Where a licensing authority issue a premises licence they may—
 - (a) attach a condition to the licence;
 - (b) exclude a condition that would otherwise be attached to the licence by virtue of section 168.
- (2) A condition attached to the licence under subsection (1)(a) may, in particular, address a matter addressed by a condition excluded under subsection (1)(b).
- (3) A condition attached to the licence under subsection (1)(a) may apply in relation to the premises generally or only in relation to a specified part of the premises.
- (4) A licensing authority may not attach a condition to a premises licence which prevents compliance with a condition of the operating licence which authorises the holder to carry out the activity in respect of which the premises licence is granted.

- 5.2.5 Any representations received must considered in terms of their relevance under the Act.

5.2.6 To be relevant the representation must relate to one or more of the licensing objectives, or must raise issues under the licensing authority's statement of policy or the Gambling Commission's Guidance or Code of Practice.

5.3 **Walsall Council Statement of Principles**

5.3.1 Part B of Walsall Council's current Statement of Principles outlines how the authority will approach decision making in respect of premises licences.

5.4 **Gambling Commission Guidance to Licensing Authorities Last updated 01 May 2021**

For ease of reference, the relevant parts of the Gambling Commission guidance in this section are attached at **Appendix 9**.

5.4.1 Walsall Council recognises that in considering and determining applications, it must have regard to the following guidance issued by the Gambling Commission, under Section 24 of the Act, which states:

Licensing Authorities' functions – Principles to be applied

1.26 In exercising its functions under the Act, s.153 states that the licensing authority shall aim to permit the use of premises for gambling in so far as it thinks it:

- a) in accordance with any relevant code of practice under s.24*
- b) in accordance with any relevant guidance issued by the Commission under s.25*
- c) reasonably consistent with the licensing objectives (subject to a. and b. above), and*
- d) in accordance with the licensing authority's statement of licensing policy (statement of policy) (subject to a. to c. above).*

1.27 The 'aim to permit' framework provides wide scope for licensing authorities 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 Guidance issued by the Commission, the licensing objectives or the licensing authorities own statement of policy.

1.28 Licence conditions are one method by which it is possible to mitigate risks associated with particular premises. The imposition of licence conditions might be prompted by local risk to the licensing objectives, for example the proximity of gambling premises to a school.

1.29 *However, licensing authorities may first wish to have proactive engagement with local operators to encourage them to effectively mitigate risks to the licensing objectives. Such engagement can facilitate an open and constructive partnership, which, in turn, can improve compliance and reduce regulatory costs. Engagement with operators should be prompted by justifiable concerns or in pursuit of the principles set out under s.153.*

1.30 *To reflect the breadth of licensing authority discretion, licensing authorities are entitled to request such information from operators as they may require in order to make effective licensing decisions.*

The Act requires that an application must be accompanied by a minimum level of information (detailed in Part 7 of this Guidance). In the Commission's view, however, this does not preclude reasonable requests from licensing authorities for additional information to satisfy themselves that their licensing decision is reasonably consistent with the licensing objectives and the commission's codes. That information may include, for example, a suitable business plan or the operator's own assessment of risk to the licensing objectives locally.

5.4.2 Walsall Council must also take into consideration the Gambling Commission's Guidance below, which explains that moral objections to gambling, unmet demand, and low-level disorder/nuisance are not valid reasons to reject applications for premises licences.

Objective 1: Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime

5.3 *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. The requirement for conditions might be determined by the operator's own risk assessment or the local area profile carried out by the licensing authority, as detailed in Part 6.

5.4 *A licensing authority will need to consider questions raised by the location of gambling premises when:*

- *formulating its statement of licensing policy*
- *receiving relevant representations to an application*

- *dealing with applications as a responsible authority in its own right*

5.5 *In the context of gambling premises licences, licensing authorities should generally consider disorder as activity that is more serious and disruptive than mere nuisance. Factors to consider in determining whether a disturbance was serious enough to constitute disorder would include whether police assistance was required and how threatening the behaviour was to those who could see or hear it. There is not a clear line between nuisance and disorder and the licensing authority should take the views of its lawyers before determining what action to take in circumstances in which disorder may be a factor.*

5.6 *Regulatory issues arising from the prevention of disorder are likely to focus almost exclusively on premises licensing, rather than on operating licences. However, if there are persistent or serious disorder problems that an operator could or should do more to prevent, the licensing authority should bring this to the attention of the Commission so that it can consider the continuing suitability of the operator to hold an operating licence.*

5.7 *Of course, licensing authorities are experienced in making judgements in relation to the suitability of premises, particularly those for which they have responsibilities under the Licensing Act 2003 / Licensing (Scotland) Act 2005, in which context they have wider powers to also take into account measures to prevent nuisance.*

5.8 *In relation to preventing disorder, licensing authorities have the ability under s.169 of the Act to attach additional conditions to premises licences, and are entitled to include a requirement for door supervision, as provided for in s.178 of the Act. If a person employed on door supervision would be required to hold a licence issued by the Security Industry Authority (SIA), that requirement will have force as though it were a condition on the premises licence. Further information on conditions on premises licences can be found in Part 9 of this Guidance.*

5.9 *There are a number of voluntary initiatives that the gambling industry participates in to address issues such as underage access, staff safety and security. These change from time to time and licensing authorities are advised to check with local operators, for example when conducting inspections, as to which (if any) scheme the operator is a part of. Further information can often be found on the website of industry trade associations.*

5.10 *Licensing authorities do not need to investigate the suitability of an applicant for a premises licence, including in relation to crime.*

The issue of suitability will already have been considered by the Commission, because any applicant (except occupiers of tracks who do not propose to offer gambling themselves) will have to hold an operating licence from the Commission before the premises licence can be issued. However, if the licensing authority receives information during the course of considering a premises licence application or at any other time, that causes it to question the suitability of the applicant to hold an operating licence, these concerns should be brought to the attention of the Commission without delay.

- 5.4.3 Additionally, also in relation to decision-making, Walsall Council must take into account the Gambling Commission's Guidance, points 5.31 – 5.34, below:

Other considerations

5.31 Licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through the use of conditions. In determining applications for premises licences and permits, a licensing authority may request as much information as it requires to satisfy itself that all the requirements set out at s.153 of the Act are met.

5.32 Licensing authorities must ensure that the application is in accordance with the relevant codes of practice, this guidance, the licensing objectives and the licensing authority's own policy statement. There is, therefore, significant scope for licensing authorities to request additional information from the applicant where they have concerns about both new applications and variations.

5.33 Where concerns remain, licensing authorities may choose to attach conditions to the premises licence. Further details are provided in Part 9.

5.34 Licensing authorities should be aware that other considerations such as moral or ethical objections to gambling are not a valid reason to reject applications for premises licences. In deciding to reject an application, a licensing authority should rely on reasons that demonstrate that the licensing objectives are not being, or are unlikely to be, met, and such objections do not relate to the licensing objectives.

An authority's decision cannot be based on dislike of gambling, or a general notion that it is undesirable to allow gambling premises in an area (with the exception of the casino resolution powers).

- 5.4.4 This point is further clarified at point 6.40 as follows:

6.40 For example, licensing authorities may wish to explain in their policy statements that any objections to new premises or requests

for a review should be based on the licensing objectives of the Act.

The policy statement could make it clear that – unlike the Licensing Act 2003 (opens in new tab) and the Licensing (Scotland) Act 2005 (opens in new tab) – the Act does not include the prevention of public nuisance and anti-social behaviour as a specific licensing objective.

6.0 Compliance and enforcement matters

6.1 Finally, in relation to compliance and enforcement, the guidance states:

36.44 There are various local authority and police powers to manage issues such as street drinking and anti-social behaviour, and licensing authorities should look to these powers in the first instance as being more appropriate remedies than the Gambling Act 2005.

7.0 Licence Conditions

7.1 *Mandatory Licence Conditions*

Under Regulation 12, Schedule 3 of the Act, default mandatory conditions apply to all premises licences authorised for use as Adult Gaming Centres.

7.2 The mandatory conditions applicable to this licence application are provided as **Appendix 10**.

7.3 *Conditions imposed or excluded by the Licensing Authority*

Section 169 of the Act makes provision for the Licensing Authority to:

- a) attach a condition to the licence; and/or
- b) exclude a condition, that would otherwise be attached, from the licence.

7.4 In respect of the exclusion or addition of conditions, the Licensing Authority must have regard to the following guidance, published under Section 24 of the Act, by the Gambling Commission:

9.28 Licensing authorities should make decisions on conditions on a case-by-case basis, and in the context of the principles of s.153.

They must aim to permit the use of premises for gambling and so should not attach conditions that limit their use except where it is necessary in accordance with the licensing objectives, the Commission's codes of practice and this Guidance, or their own statement of policy. Conversely, licensing authorities should not

turn down applications for premises licences where relevant objections can be dealt with through the use of conditions.

9.29 Licensing authority statements of policy will need to consider the local circumstances which might give rise to the need for conditions. Where there are specific risks associated with a particular locality, the licensing authority might decide to attach conditions to the premises licence to mitigate those risks. For example, local issues associated with a high crime rate may put a premises at risk of not being consistent with the licensing objectives, and specific conditions may be necessary to address the risk.

9.30 Where there are risks associated with a specific premises or class or premises, the licensing authority may consider it necessary to attach conditions to the licence to address those risks, taking account of the local circumstances.

9.31 Conditions imposed by the licensing authority must be proportionate to the circumstances which they are seeking to address. In particular, licensing authorities should ensure that the premises licence conditions are:

- relevant to the need to make the proposed building suitable as a gambling facility;*
- directly related to the premises (including the locality and any identified local risks) and the type of licence applied for; and*
- fairly and reasonably related to the scale and type of premises reasonable in all other respects.*

7.5 Conditions that may not be attached to premises licences by licensing authorities

Guidance published by the Gambling Commission under Section 24 of the Gambling Act 2005 states:

9.32 The Act sets out certain matters that may not be the subject of conditions:

- S.169(4) prohibits a licensing authority from imposing a condition on a premises licence which makes it impossible to comply with an operating licence condition;*
- S.172(10) provides that conditions may not relate to gaming machine categories, numbers, or method of operation;*
- S.170 provides that membership of a club or body cannot be required by attaching a condition to a premises licence (the Act specifically removed the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and*

- *S.171 prevents a licensing authority imposing conditions in relation to stakes, fees, winnings or prizes.*

8.0 Decision

- 8.1 The Licensing Sub-Committee may resolve to:
- grant the application as requested
 - grant with additional/modified conditions attached to the premises licence; or
 - reject the application.
- 8.2 Where the applicant, responsible authority, or other persons is aggrieved by the decision of the licensing authority, appeal is to Magistrates Court where the reasonableness or otherwise of the decision will be tested.

9.0 Staffing issues

None arising from this report.

10.0 Citizen Impact

Residents, businesses, or their representatives ('interested parties') have had the opportunity to submit 'relevant representations'.

11.0 Community Safety

Issues raised in relation to potential crime and disorder and public nuisance are addressed by committee through the decision-making process.

12.0 Environmental Impact

Nothing arising from this report.

13.0 Performance and Risk Management Issues

Nothing arising from this report.

14.0 Equality Implications

Nothing arising from this report.

15.0 Consultation

The consultation and advertisement of the application has been conducted in accordance with the prescribed statutory regulation.

16.0 Associated Papers

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| Appendix 1 | Premises licence application |
| Appendix 2 | Premises Licence Plan |
| Appendix 3 | Application cover letter |
| Appendix 4 | Newspaper Notice |
| Appendix 5 | Public Notice and Responsible Authority Notice |
| Appendix 6 | Local Area Risk Assessment |
| Appendix 7 | Social Responsibility Docs |
| Appendix 8 | Representations from interested parties |
| Appendix 9 | Relevant Gambling Commission Guidance |
| Appendix 10 | Mandatory Adult Gaming Centre Conditions |

17.0 Contact Officer

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