

Committee: Licensing Committee

Agenda Item

Date: 30 May 2007

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Title: **Determination of an application for a permit for Amusement with Prizes machines at premises known as The Kings Arms Public House, Station Road, Stansted**

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Item for decision

Impact

Communication/Consultation	None
Community Safety	None
Equalities	None
Finance	Permit fee £32
Human Rights	None.
Legal implications	In the event Members are minded to grant the application as the premises are licensed under the Licensing Act 2003 Members must impose conditions that the machines (a) be located on premises which contain a bar at which alcohol is served for consumption on the premises (without a requirement that alcohol is served only with food), and (b) be made available for use only at a time when alcohol may be supplied in reliance on the premises licence under Part 3 of the Licensing Act 2003 . (Gaming Act 1968 Sch 9 paragraph 10AA) There is a right of appeal to the Crown Court in the event that the applicant is not happy with the decision of the Committee
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Summary

- 1 Members are asked to determine an application for a permit for three Amusement with Prizes (AWP) Machines under the Gaming Act 1968 for a premises known as The Kings Arms, Station Road, Stansted. Applications for more than 2 machines are to be determined by Members.
- 2 Until the implementation of the Licensing Act 2003, the Council only issued AWP permits for premises that were not licensed to sell alcohol and were not arcades. Magistrates used to issue the other gaming machine permits. Following the introduction of the Licensing Act, licensing authorities became responsible for granting AWP permits to alcohol licensed premises as well.
- 3 The function of granting amusement with prizes permits is however still carried out under the statute of The Gaming Act 1968 and will remain so until this act is replaced by The Gambling Act 2005 which will go live on 1 September 2007.

Background

- 4 An application has been made by Essex Leisure on behalf of Punch Taverns Ltd for 3 AWP machines to be installed in the premises known as the Kings Arms, Station Road, Stansted. (See location plan attached at Appendix 1 and copy of the application form as Appendix 2).
- 5 The premises currently has a permit for 2 AWP machines which was previously issued by Essex magistrates Courts which expires in January 2008. The premises are desirous of installing another machine for which they would need to apply for another permit, and in order to avoid two permits running at the same time, but with different expiry dates, they have agreed to surrender the existing permit prior to the Licensing hearing, and have made a fresh application for a total of 3 machines (which includes the two for which they already have permission).
- 6 The applicants have been invited to submit further information as to why they are seeking an increase in machines, and the Landlord of the premises has advised that the reason for wanting an additional machines is due to the increased level of demand on the premises for the machines they already in place. A request was made to Essex Leisure to supply details for the existing usage for the 2 currently licensed machines to analyse the demand for another machines (see letter attached as Appendix 3)
- 7 The three machines are all the 'all cash machines' with a maximum stake of 25 pence, and maximum prize of £25. The premises plan shows the position of the two machines currently permitted, plus the proposed location of the third machine. (see plan Appendix 4)

8 Legal provisions of Gaming Act 1968

Amusement with Prizes Machines, also known as AWP's, are a class of gaming machine, defined in Section 34 of the Gaming Act 1968. They are often commonly known as "fruit" or "slot machines" and there are two types of machine in this class:

- ❖ The "all cash" machine, which has a maximum stake of 30 pence and a maximum prize of £25. This type of machine is commonly found in pubs or arcades with an over 18 door entry policy and is issued as a Section 34(5E) permit.
 - ❖ The "coin or token" machine which has a maximum stake of 30 pence and a maximum prize of £5 cash or £8 non cash (tokens). This type of machine is usually found in take away's, restaurants or amusement arcades which allow access to children and are issued as Section 34(1) permits.
- 9 The Gaming Act 1968 does not impose any upper limit on the number of AWP machines in pub that is permitted. In determining applications, authorities have the power to set a limit on the number on a case by case basis.
- 10 In line with the previous good practice guide issued to Justices, the Department for Culture Media and Sport (DCMS) recommends that authorities do not need a hearing if the application is for no more than 2 machines. Members might also wish to be aware that when the Gambling Act 2005 comes into force, alcohol licensed premises will automatically be entitled to operate two machines, provided they comply with a simple notification procedure.
- 11 Local Authorities have no power to attach conditions (other than mandatory conditions and a condition limiting the number of machines) on S34 permits. Local authorities can only decide to grant or reject applications, in which they have absolute discretion under Schedule 9 of the Gaming Act. All cases must be considered on their merits and authorities must have lawful reasons for rejecting an application.
- 12 Under the 1968 Act, permits must be issued for at least three years, and the DCMS recommends that new or renewed permits are issued for three years only.
- 13 Members should also be aware that upon the implementation of the Gambling Act 2007 in September this year, any existing permits will automatically carry over until their natural expiry date whereupon they will need to renew under the new legislation. However, from September, irrespective of whether they have an existing converted permit or a new permit, they will be bound by the requirements of the new Act, which includes being bound to follow the Gambling Commission's code of practice on gaming machines in alcohol licensed premises, that includes requirements on location of machines, their supervision, ensuring under 18's do not have access to them, and other similar matters.

14 Despite the transfer of powers to the licensing authority under the Licensing Act 2003 to deal with these permits, the Licensing Authority cannot apply any of the provisions of the four licensing objectives contained within the Licensing Act 2003 to the grant or refusal of an application for a Section 34 amusement with prizes permit as they are not relevant in such circumstances. The Licensing Authority must abide by the requirements laid down in Schedule 9 of the Gaming Act 1968 in relation to applications for Section 34 amusement with prizes permits.

▪ **Recommendation**

- Because of the quasi-judicial nature of the hearing and the proceedings that will take place, a recommendation cannot be put to Members of the Licensing Committee and Members are asked to determine the application.

▪ **Background Papers**

- Appendix 1 – Location plan of premises
- Appendix 2 – Application form
- Appendix 3 – Letter from applicant regarding surrender of courts permit and listing existing usage.
- Appendix 4 - Plan of premises indicating the position of machines.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Decision is not in accordance with legislation and the applicant appeals to the Crown Court.	Low as Members will have the benefit of legal advice	Medium – an unlawful decision may lead to an appeal which (if successful) could lead to reputational damage for the Council and may result in an award of costs	Members determine the application in accordance with the legislation and give reasons for their decision.