



ISLINGTON

Environment & Regeneration
222 Upper Street, London N1 1XR

Report of : Assistant Director of Environment and Regeneration (Public Protection)

Meeting of	Date	Agenda Item	Ward(s)
Licensing Regulatory Committee	6 March 2007	B2	Finsbury Park

Delete appropriate	as		Non-exempt
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Subject: GRANT OF A PERMIT FOR GAMING MACHINES BY WAY OF AMUSEMENT WITH PRIZES, FOR PURPOSES OF SECTION 34(5E) OF THE GAMING ACT 1968

APPLICANT; BLACKHEATH LEISURE (CAROUSEL) LTD

PREMISES; 3 SEVEN SISTERS ROAD N7 6AJ

1 Synopsis

- 1.1 To determine an application from Blackheath Leisure (Carousel) Ltd trading as Quicksilver, for the grant of two permits for the use of gaming machines on the premises at 3 Seven Sisters Road N7.

2 Recommendation

- 2.1 To consider the application for Blackheath Leisure (Carousel) for the grant of two permits for the use of gaming machines at 3 Seven Sisters Road, N7, and, if granted, that they be subject to the statutory conditions set out in paragraph 10B (3) of schedule 9 of the Gaming Act 1968 and any Planning or Building Control requirements.

3 Background

- 3.1 On 25 October 2006, an application for grant of two Section 34 (5E) Permits under the Gaming Act 1968 at 3 Seven Sisters Road N7 was received from the applicant. Copies of the application are attached as Appendix A.
- 3.2 The applicant is the existing holder of a Section 34(5E) gaming permit for the premises. This permit does not expire until 30 September 2008. The applicant has proposed to sub divide the existing premises to create two permanent separate areas, each with

separate entry/exit point to the outside. The premises are arranged on the ground floor only with access from Seven Sisters Road.

3.3 The applicant is currently allowed to operate an unlimited number of gaming machines. These consist of two categories;

- All cash machines with a maximum payout of £35.00 under the existing s34(5)E permit,
- Machines with a higher cash maximum payout of £500.00, under Section16 of the Lotteries & Amusements Act 1976. The applicant currently has seven of these Section16 machines on the premises.

3.4 In late 2007, when the new Gambling Act 2005 is enacted, the number of higher payout machines, will be known as Category B3 machines, will be limited to four each per premise. The number of lower cash payout, known as Category C machines, will remain unlimited. The Gambling Commission has produced a guide to Licensing Authorities for Premises Licence under the Gambling Act 2005. Part 7.11 makes reference to separate premises licence. An extract from the guide is attached as Appendix B

3.5 On 20 November 2006, the Licensing Officer received a letter from the applicant detailing further details of the proposal. A copy is attached as Appendix C.

3.6 On 18 December 2006, the Licensing Officer received plans from the applicant showing the layout of the premises after sub division. A copy is attached as Appendix D.

3.7 On 9 February 2007, the licensing officer informed the applicant in writing that the matter would be put to public consultation.

3.8 The applicant claims to have made 67 applications of this type so far with other local authorities. So far, 23 Authorities have approved, and a further 6 are pending. A list of names of the authorities has been given to the Licensing Officer.

4 Observations

4.1 The premises are situated near the junction of Holloway Road and Seven Sisters Road N7. The area is a mix of residential and shop premises. The nearest School is Grafton Primary School at Eburne Road N7.

5 Objections

5.1 We have received one objection to this application from the Nags Head Town Cente Group. This objection is attached as Appendix F.

5 Implications

5.1 Financial Implications

- 5.1.1 The applicant has paid the fee of £500. Should the application be refused, the fee shall be refunded less the Council's cost in dealing with the application.

5.2 Legal Implications

- 5.2.1 The appropriate authority may grant to any applicant, and from time to time renew, a permit under Section 34 and 34(5E) of the Gaming Act 1968 for the use of any premises used wholly or mainly for the provision of amusements by means of machines to which Part III of the Act applies, on such terms and conditions and subject to such restrictions as specified within Schedule 9. Any Permit under this Schedule shall remain in force for three years beginning with the date on which it was granted or renewed.
- 5.2.2 In considering any application for the grant or renewal of a Permit, the local authority shall have regard to any resolution passed by them, that it will not grant or renew any permits in respect of certain classes of premises and restricting the number of Gaming Machines in certain premises. However this resolution does not apply to premises used wholly or mainly for the provision of amusements by means of machines. The grant of a permit for premises used wholly or mainly for the provision of amusements by means of gaming machines shall be at the discretion of a local authority.
- 5.2.3 The local authority shall not refuse to grant or renew a permit without allowing the applicant an opportunity to be heard by a committee of the local authority.
- 5.2.4 The grant of a permit for premises used wholly or mainly for the provision of amusements by means of gaming machines shall be at the discretion of the local authority. The local authority will have to exercise its discretion in accordance with public law principles, acting reasonably and for proper purposes only. A case summary of *R v Liverpool Crown Court & Liverpool City Council ex parte Luxury Leisure Ltd* is attached as Appendix E. In this case the Court of Appeal found that in exercising its discretion the local authority was entitled to take into consideration the weight of local opposition provided that the objections were not based on some demonstrable misunderstanding of the factual position or a gut reaction.
- 5.2.5 A local authority cannot refuse to renew a permit except on the grounds that the local authority has been refused reasonable facilities to inspect the premises, the statutory conditions have not been complied with, or because of the way amusements have been provided or conducted on the premises.

- 5.2.6 The local authority is required to state in the permit whether it is granted for the purposes of section 34(1) or 34(5E). A Permit granted under section 34(5E) is issued subject to the statutory conditions set out in paragraph 10B (3) of schedule 9 of the Act; (a) in the case of premises where admission is restricted to persons aged 18 or over, that no person under 18 is admitted to the premises, and (b) in the case of premises where admission is not restricted to persons aged 18 or over-; that any machine in respect of which the conditions mentioned in section 34(5A) of the Act are observed is located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access otherwise than by means of an entrance designed for the purpose; that only persons aged 18 or over are admitted to an area of the premises in which any such machine is located; that access to an area of the premises in which any such machine is located is supervised; that any area of the premises in which any such machine is located is so arranged as to permit all parts of it to be observed; (5) that at the entrance to and inside any such area are prominently displayed notices indicating that access to the area is prohibited to persons aged under 18.
- 5.2.7 If a local authority refuses to grant or renew a permit, or grant or renew it subject to a condition, the authority shall give notice of their decision to the applicant and of the grounds on which it is made. The applicant may appeal against the decision to the Crown Court.
- 5.2.8 The Human Rights Act 1998 makes it unlawful for the Council to act in a manner incompatible with Convention Rights. Convention rights include the right to and respect for private and family life, including the home as well as the right to the peaceful enjoyment of possessions (a licence has been held by the European Court to be a person's possession). The applicant has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. The actions of a Licensing Committee in attaching a condition to a licence must be "proportionate" to any "pressing social need" and reasons should be given not only on refusing a licence but also when granting it.
- 5.2.9 The Committee considers each application being mindful of Section 17 of the Crime and Disorder Act 1998 which imposes a duty on each local authority when exercising any of its functions to have due regard to the likely effect of the exercise of those functions on, and the need to do all that it possibly can to prevent crime and disorder in the area.

5.3 **Equality Implications**

- 5.3.1 Applicants are advised that the provisions of the Disability Discrimination Act 1995 apply to them as a provider of a service, i.e. facilities for entertainment, recreation or refreshment (as defined by S19 of the Act). In particular that s21 of the Act places them under a duty to make arrangements to ensure the service is accessible to disabled persons.

6

Conclusion and reasons for recommendations

6.2

The grant of a permit for premises used wholly or mainly for the provision of amusements by means of gaming machines is at the discretion of the local authority. The local authority must exercise its discretion in accordance with public law principles, acting reasonably and for proper purposes only

Background papers:

- Appendix A Copy applications for Permits under Gaming Act 1968
- Appendix B Extract from Gambling Commission Guide to Licensing authorities
- Appendix C Copy letter from applicant dated 10/11/06
- Appendix D Plan showing location and proposed layout of premises
- Appendix E Case summary of R v Liverpool Crown Court & Liverpool City Council ex parte Luxury Leisure Ltd
- Appendix F Objection letter from Nags Head Town Centre Management Group

Final Report Clearance

Signed by

Assistant Director of Environment and
Regeneration (Public Protection)

Date

Received by

Head of Democratic Services

Date

Report author : David Fordham _____

Tel : 020 7527 3458 _____

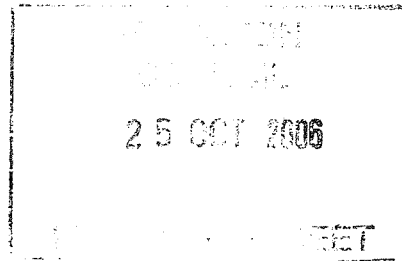
Fax : 020 7527 3038 _____

E-mail : david.fordham@islington.gov.uk

PA: - 109475 APPENDIX A

TALARIUS PLC

18th October 2006



The Licensing Manager
Licensing & Trading Standards
The London Borough of Islington
159 Upper Street
Islington
London
N1 1RE

Dear Sir/Madam

**RE: SECTION 34(5E) GAMING PERMIT – QUICKSILVER GAMING CENTRE
3 SEVEN SISTERS ROAD LONDON N7 6AJ**

Your records will show that one of our Group Companies, Blackheath Leisure (Carousel) Ltd, holds a current Section 34(5E) Gaming Permit, No. GM/892, for the above adult gaming centre premises (photocopy enclosed for your reference).

We are seeking to vary the existing Section 34(5E) Gaming Permit and therefore enclose 2 new applications, along with a cheque for £500 to cover the 2 application fees for 2 new Section 34(5E) Permits.

In the above premises, we currently operate a number of all-cash £25 payout machines together with a number of higher stake and higher prize pay-out machines which are governed by Section 16 of the 1976 Lotteries and Amusements Act.

It is our intention to create a separate area within our existing premises and to refit this area to a higher specification than the existing Quicksilver machine lounge, offer a higher level of customer service and to install a limited number of higher pay-out machines.

I am sure you will be aware that, under current legislation, we do not actually need to vary the existing Permit for our proposals. However, when the Gambling Act 2005 comes into force in the latter part of 2007, the number of higher pay-out machines, which will then be known as Category B3 machines, will be limited to 4 per licensed premises.

If we wish to continue to offer the same high level of service to our customers, then this type of sub-division will become necessary. Indeed, there are guidance notes issued by the DCMS that deal with sub-division but we would prefer not to wait until the latter part of next year to put our arrangements in place.

As this is rather an unusual application, I would be more than happy to come to your offices to discuss the situation or if you prefer, conduct you on a site visit of the premises so that you can better understand our proposals.



Silbury Court 368 Silbury Boulevard Milton Keynes MK9 2AF
Telephone +44 (0)1908 696100 Fax +44 (0)1908 393855 Website www.talarius.com

Registered Office: Talarius plc PO Box 49 Black Friars Lane London EC4V 6HD

Registered in England No. 3382157



I look forward to hearing from you in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Hawkins', followed by a long horizontal line extending to the right.

Chris Hawkins

Director of Planning

Direct Dial: 01474 855560

Mobile: 07802 161484

Email: chrishawkins@talarius.com

encs

GAMING ACT 1968
Section 34 and Schedule 9

PA1-109975

APPENDIX A

APPLICATION FOR *[GRANT] *[RENEWAL] OF PERMIT FOR PROVISION OF
MACHINES FOR GAMING BY WAY OF AMUSEMENTS WITH PRIZES UNDER THE
ABOVE ACT

Applicant(s) Name(s) (in full - individual(s) or company name)

Blackheath Leisure (Carousels) Ltd

Address of Premises.....

3 Seven Sisters Road
London N7 6AT

Address of Applicant or Registered Office (if different to above).....

Silbury Court
368 Silbury Boulevard Milton Keynes
MK9 1JH

Permit Decision to be sent to ((a) or (b) or state other address, if different to above)

Silbury Court

Applicant(s) Date(s) of Birth

*[I] [We] hereby apply for the *[grant] [renewal] of a permit under S34 Gaming Act 1968 in respect of
the above premises which *[I] [We] [occupy] [intend to occupy]. The premises will be used for the
following purposes: (State precisely, eg, arcade)

Adult Gaming Centre

Tick as appropriate

The application is made for a permit expressed to be granted for the purposes of
Section 34(1) of the Gaming Act 1968

This will allow only amusement with prizes machines


The application is made for a permit expressed to be granted for the purposes of
Section 34(5E) of the Gaming Act 1968

This will allow use of all-cash machines, either on their own or together with
amusement with prizes machines

ADMISSION TO THE PREMISES WILL BE RESTRICTED TO PERSONS AGED 18 OR OVER
OR FOR DESIGNATED AREAS IN AMUSEMENT PREMISES WITH AWPS

The Fee of £450..... is enclosed herewith. Fee will be refunded if the permit is refused

Date: 18/10/06



Applicant(s) Signature(s)



ISLINGTON

NOTES

1. It is an offence to operate a machine unless the appropriate permit has been granted by the local authority within whose area the premises are situated and is in force under the act.
2. The Betting and Gaming Duties Act 1981 requires that you must also obtain a licence from HM Customs & Excise before providing a machine for gaming. For this purpose, you should write to HM Customs & Excise, Bournemouth Excise Station, County Gates House, 300 Poole Road, Poole BH12 1AQ or telephone that office on Bournemouth 769065.

FOR OFFICE USE ONLY	
Fee £500.00	Date 30/10/06
Receipt	1474219
Reg.No.	GM / 892

APPENDIX B

- (b) large casino premises licence; or
- (c) small casino premises licence.

7.8 In addition, there will be a fourth category of casinos that will be permitted through transitional arrangements under Schedule 18 of the Act. This category will consist of casinos that are already permitted under the old legislation (Gaming Act 1968) when the Gambling Act comes into force. Most of these casinos will fall below the new size thresholds.

7.9 Please see Part 17 of this guidance for more information about the definitions of casinos and licensing of those premises.

Meaning of premises and conditions

7.10 In the Act, "premises" is defined as including "any place". Section 152 therefore prevents more than one premises licence applying to any place. But a single building could be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can reasonably be regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, pier, track, or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about subdivisions of a single building or plot.

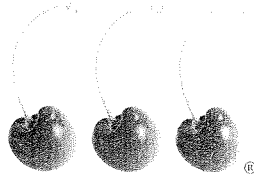
7.11 In most cases the expectation is that a single building/plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will always be a question of fact in the circumstances. However, the Commission does not consider that areas of a building that are artificially or temporarily separated can properly be regarded as different premises.

7.12 Licensing authorities will need to consider the definition of premises in light of the controls that can be placed on gambling through conditions. Licensing authorities should, in particular, remember that where they have concerns about the use of premises for gambling, these may be addressed through licence conditions.

7.13 Licensing authorities should pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Clearly, there will be specific issues that authorities should consider before granting such applications, for example whether children can gain access; compatibility of the two establishments; and ability to comply with the requirements of the Act. But, in addition, an overriding consideration should be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should, be prohibited under the Act.

7.14 DCMS has yet to specify what mandatory or default conditions will be set in relation to access to and from gambling premises. Guidance on this will be updated when the position is known.

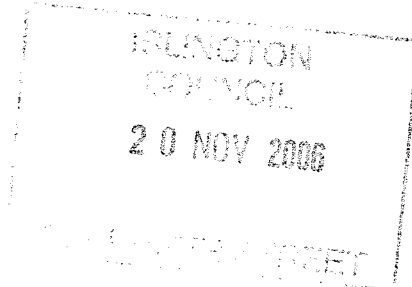
7.15 With the exception of bingo clubs, the non-gambling area of the regional casino, tracks on race-days and licensed family entertainment centres, children will not be permitted to enter licensed gambling premises. Therefore businesses will need to consider carefully how they wish to configure their buildings if they are seeking to develop multi-purpose developments.



TALARIUS PLC

10th November 2006

Mr G Scott
 Trading Standards Support
 Public Protection Division
 The London Borough of Islington
 159 Upper Street
 Islington
 London
 N1 1RE



Dear Mr Scott

**RE: SECTION 34(5E) GAMING PERMIT – QUICKSILVER GAMING CENTRE
 3 SEVEN SISTERS ROAD LONDON N7 6AJ**

Further to our recent telephone conversation concerning the above, I have enclosed for your information the relevant sections of the Guidance to Local Authorities from the Gambling Commission that deal with the sub-division of premises.

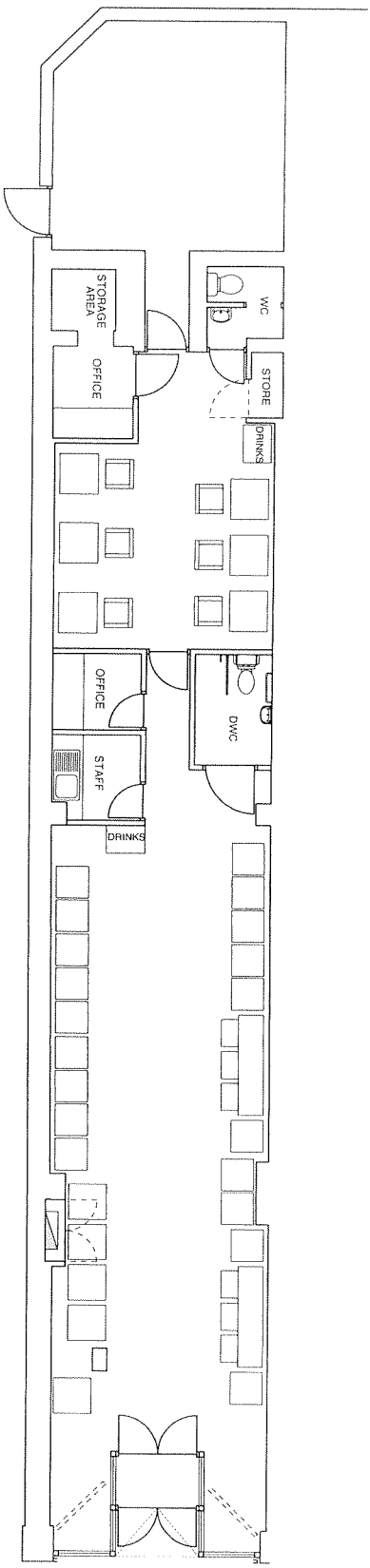
The key features of our proposal are as follows:-

1. It will result in the permanent sub-division of the premises into two entirely separate areas that are adult only.
2. Each will have its own entrance/exit to the outside.
3. The decoration in each will be different.
4. Each will have its own refreshment facilities.
5. Each will have a dedicated team of staff at all times when the premises are open.
6. The building work will involve the construction of permanent walls and doorways.

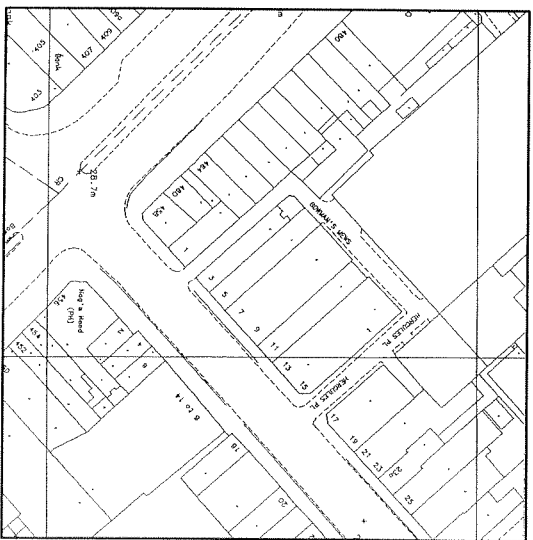
I hope this additional information will help to give you a clearer idea of what we are trying to achieve.

I look forward to hearing from you when you have had an opportunity to consider our proposal further.

DATE	NOVEMBER 95
SCALE	1:1250
PROJECT	PROPOSED ALTERNATIONS TO ADULT GAMING CENTRE
CLIENT	RAI LIMITED
ARCHITECT	ANNWOOD DESIGN
ADDRESS	210 SANDROODE ROAD HERTFORDSHIRE AL1 4AL
PHONE	04753 6177
FAX	04753 6178
EMAIL	ANNWOOD@ANNWOODDESIGN.CO.UK



1 PLAN



2 LOCATION PLAN
Scale 1:1250

APPENDIX D

CLIENT	RAI LIMITED
PROJECT	8 CENTRAL SYSTEMS ROAD LONDON N7 6AU
TITLE	PROPOSED ALTERNATIONS TO ADULT GAMING CENTRE
DATE	1578 - 01 ALT
ARCHITECT	ANNWOOD DESIGN
ADDRESS	210 SANDROODE ROAD HERTFORDSHIRE AL1 4AL
PHONE	04753 6177
FAX	04753 6178
EMAIL	ANNWOOD@ANNWOODDESIGN.CO.UK
DATE	NOVEMBER 95

**R v (1) LIVERPOOL CROWN COURT (2) LIVERPOOL CITY COUNCIL,
EX PARTE LUXURY LEISURE LTD (1998)**

CA (Civ Div) (Simon Brown LJ, Aldous LJ, Clarke LJ) 9/10/98

ADMINISTRATIVE LAW - HOSPITALITY AND LEISURE - LICENSING -
LOCAL GOVERNMENT

AMUSEMENT ARCADE : GAMING (AMENDMENT) ACT 1986 :
APPLICATION FOR PERMIT : DISCRETION TO GRANT PERMIT : PUBLIC
OPPOSITION : EXTENT TO WHICH PUBLIC OPPOSITION CAN BE TAKEN
INTO ACCOUNT : GAMING LICENCES : SOCIAL CONDITIONS

In exercising its discretion whether or not to grant a permit under s.34 Gaming (Amendment) Act 1986 the relevant authority was entitled to take into consideration the weight of local opposition provided that the objections were not based on some demonstrable misunderstanding of the factual position or a gut reaction.

Appeal of the applicant, Luxury Leisure Ltd, from the order of Owen J made on 17 October 1997 whereby he dismissed the applicant's application for a judicial review of the first and second respondents' refusal to grant the applicant a permit under s.34 Gaming (Amendment) Act 1986. The applicant wished to open an amusement arcade in the Norris Green area of Liverpool for which a permit was required under s.34 and Sch.9 of the Act and under s.16 and Sch.3 Lotteries and Amusements Act 1976. On 15 August 1995 the second respondent ('the council') refused the application. In its decision letter the council said that in light of the social conditions and nature of the area the proposed arcade would have a negative impact on an area frequented by children and young people and that in any event alternative facilities were already available. The applicant's appeal to the Crown Court was by way of rehearing. On 12 January 1996 Crompton J dismissed the applicant's appeal. The judge found that there were wide ranging social problems in a deprived area with a high unemployment rate and a large number of single parent families. Many witnesses had given evidence including representatives from a large number of groups. The judge was satisfied that there had been wide consultation amongst the community and that the views expressed were informed and not simply gut reactions. Accordingly he held that the views of the majority should be considered as an important factor and that having regard to the social problems and the "voice of the people" the appeal should be dismissed. The applicant applied for a judicial review of the decision contending that the judge had erred in law in ruling that the Crown Court had been entitled to take into account the amount of opposition per se without examining whether that opposition was valid. The application was dismissed by Owen J on 17 October 1997 and the applicant appealed. The applicant contended that whilst it was not doubted that there was strong opposition this was irrelevant unless the reasoning underlying that opposition was plain and that the court agreed with that reasoning. In support of this counsel cited as authority two Scottish case: *Noble Organisation Ltd v City of Glasgow District Council* (No.3) 1991 SLT 213 and *Kilmarnock & Loudon District Council v Noble Organisation Ltd* 1992 Unreported, 25 June 1992.

HELD: (1) The Scottish authorities supported the English view that although a local authority's discretion was untrammelled the permit could only be refused for a good

reason. (2) In R v Chichester Crown Court, ex parte Forte (1995) JPR 285 Brooke J held that strong local opposition, for acceptable reasons, could be taken into account. Such consideration constituted local decision-making in action and was what Parliament had clearly intended. As Crompton J had concluded, "the voice of the people" was important. (3) If however the objections rested on a demonstrable misunderstanding of the factual position, or were no more than indicative of a gut reaction, then the objections could carry no weight and had to be ignored. (4) In the present case the local community's objections had been well-founded in its concern regarding the introduction of gambling to an already impoverished area with a high degree of unemployment. (5) Accordingly the applicant's central submission, that the respondents had relied on the weight of the objection and not on the reasons underlying it, was unfounded.

Appeal dismissed.

John Saunders QC instructed by Hay & Kilner (Newcastle-upon-Tyne) for the appellant. Stephen Sanvain QC and Paul Tucker instructed by the Criminal Business Branch of the Court Service, for the first respondent and by the Head of Legal Services, Liverpool City Council for the second respondent.

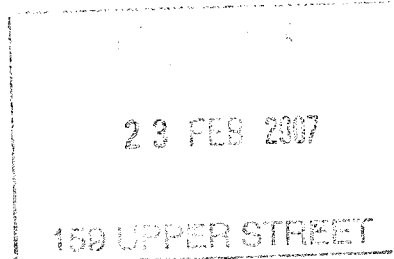
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345 : Times, October 26, 1998**

Document No. AC8400263

APPENDIX F

Nags Head Town Centre Management Group
C/O 407 Holloway Road, London N7 6HP

Jan Hart
Assistant Director
Public Protection
Islington Council
159 Upper Street
London, N1 1RE



22 February 2007

Dear Ms Hart

Re: Planning Application – Quicksilver 3 Seven Sisters Road, London N7

I understand that the above amusement arcade has made an application to install higher payout gaming machines at the above location. At the recent meeting of the town centre management group it was discussed by the members and it was unanimously agreed that I should write as chairman on behalf of the group expressing concern that more serious gambling will be allowed on the premises.

The reasons for these concerns are that the area already suffers from a great deal of social deprivation and allowing higher payout machines will encourage more gambling and exacerbate the situation.

Yours sincerely

Ian Gault FNAEA
Chairman

