

# LICENSED PREMISES GAMING MACHINE PERMIT VARIATION APPLICATION – BOTWELL INN

**Committee**

Licensing Sub-Committee

**Officer Contact**

Steven Dormer, Residents Services

**Papers with report**

Appendix 1 - Gaming Machine Permit Variation Application  
Appendix 2 - Copy of current Gaming Machine Permit  
Appendix 3 - Proposed Plan  
Appendix 4 – Compliance Policy  
Appendix 5 –Copy of Licensing Act 2003 Premises Licence  
Appendix 6 – Gambling Commission’s code of practice for Gaming Machine Permits

**Ward(s) affected**

Botwell

## SUMMARY

Determination of the Gaming Machine Variation Application in respect of Botwell Inn, 25-29 Coldharbour Lane, Hayes, UB3 3EB by J.D Wetherspoon. The application is to increase the amount of gaming machines on site from 5 to 7 category C machines, and is attached as Appendix 1.

## RECOMMENDATION

**On consideration of the application, the Licensing Sub Committee are asked to determine the application by way of:**

- a) granting the application
- b) refusing the application, or
- c) Granting the permit in respect of
  - i. a smaller number of machines than that specified in the application
  - ii. a different category of machine from that specified in the application, or
  - iii. both

A licensing authority may not attach conditions to a permit.

## INFORMATION

A variation application and the supporting documents for a gaming machine permit, in respect of Botwell Inn, 25 - 29 Coldharbour Lane, Hayes, UB3 3EB, was submitted to the Licensing Service on 18<sup>th</sup> July 2019.

The application requests an increase of machine usage from the existing 5 machines to 7. The previous permit came in to effect on 1<sup>st</sup> March 2010 and is attached as Appendix 2.

The application was submitted in a complete format and in accordance with the procedures set out in the Gambling Act 2005.

The applicant has provided a layout of the locations of the gaming machines which is attached as Appendix 3.

There are currently three Cat C machines that are very difficult for the staff to monitor from the bar area. The other existing two Cat C machines can be monitored by staff from the bar area.

Upon examination of the plan and following a site visit, the location of the new machines can be viewed by staff from the bar area.

Upon request, the applicant has submitted JD Wetherspoon's policy overview on gaming machines, which is attached as Appendix 4.

The application procedure does not require any consultation with responsible authorities or any advertising/legal notice.

**General Information:**

- The Premises Licence has been issued under the Licensing Act 2003 for the sale of alcohol and late night refreshment provisions, and is attached as Appendix 5.
- The holder of both premises licence and subsequent permit authorising gaming activities are required to comply with the Gambling Commission’s code of practice, attached as Appendix 6.
- Gaming Machines on site of a licensed premises are permitted to be either category C and/or D, category breakdowns are depicted below:

Gaming machines (fruit machines, slot machines) fall into categories depending on the maximum stake and prize available:

Machine category	Maximum stake	Maximum prize
<b><u>C</u></b>	£1	£100
<b><u>D non-money prize (other than crane grab machine)</u></b>	30p	£8
<b><u>D non-money prize (crane grab machine)</u></b>	£1	£50
<b><u>D money prize</u></b>	10p	£5
<b><u>D combined money and non-money prize (other than coin pusher or penny falls machines)</u></b>	10p	£8 (of which no more than £5 may be a money prize)
<b><u>D combined money and non-money prize (coin pusher or penny falls machine)</u></b>	20p	£20 (of which no more than £10 may be a money prize)

The sub-committee is asked to consider the application and determine the application as per the options referred to within the above recommendations.

## LEGAL IMPLICATIONS

The gambling activities must remain ancillary to the main purpose of the premises and the permits are reliant on the premises holding a valid alcohol licence. S.283, Schedule 13, Para 15 of The Gambling Act 2005, and Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007/1833 entitles the Holder of a permit to apply to the Licensing Authority to vary the number or category (or both) of the gaming machines authorised by the permit.

Part 26 of the Gambling Commission Guidance to Local Authorities has the same standing as the S182 Guidance under the LA03. Part 26 specifically focuses on gaming machine provision in licensed premises and is useful in guiding decision making.

Holders of licensed premises gaming machine permits are required to comply with a code of practice issued by the Commission on the location and operation of machines; the Code of Practice for gaming machines in clubs and premises with an alcohol licence. Applications must be made by a person or organisation that holds the on-premises licence under the Act; in effect the premises.

In considering this application, the sub-committee will sit in an administrative capacity and is thus obliged to consider the application in accordance, in particular, with both Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) Regulations 2007 and the rules of natural justice. The practical effect of this is that the sub-committee must make its decision based on evidence submitted in accordance with the legislation and give adequate reasons for reaching its decision. The Authority is bound by the Human Rights Act 1998.

The Sub-Committee, in exercising its functions under the Gambling Act 2005, s.153, states that the authority shall give due consideration to the following:

- Relevant Code of Practice;
- Relevant guidance issued by the Commission;
- The Licensing Objectives, and
- Hillingdon's Licensing Authority Statement of Licensing Policy;

The Licensing Objectives for Gambling purposes 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.

The Sub-Committee may issue a licensed premises gaming machine permit for any number of category C and D in a licensed premises. If the sub-committee is minded to alter the number of gaming machines, their decision will effectively substitute the number of machines under s.282 of the Gambling Act 2005.

In determining an application, the licensing authority must have regard to the licensing objectives and their guidance. They have wide discretion to take into account any other matters that are considered relevant to the application. The application does not require notification to the Commission, or Police for determination, and it is the Licensing Authority that is responsible for specifying the necessary requirements as they see fit.

The licensing authority has power to;

1. Grant the variation application;
2. Grant with alter the number of machines; or
3. Refuse.

If granted, the licensing authority must issue the permit as soon as possible. Where there is a refusal of the application they must notify the applicant, and set out the reasons for the refusal. The licensing authority must not refuse an application, or grant it for a different number or category of machines, unless they have notified the applicant of their intention to do so, and provide them with an opportunity to make representations, orally, in writing, or both.

An applicant for a variation of the permit whose application has been refused, or who is aggrieved by conditions imposed, may appeal against the decision to the Magistrates' Court. Any other person, who made a valid representation, may appeal to the Magistrates' Court against the decision to grant the application or against any conditions imposed 21 days from notice of the relevant decision.

#### **APPENDICES:**

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#### **BACKGROUND DOCUMENTS:**

The Gambling Act 2005

The Council's Statement of Gambling Principles

Gambling Commission Guidance to Licensing Authorities