

LONDON BOROUGH OF LEWISHAM

MINUTES of the meeting of the LICENSING COMMITTEE, which was open to the press and public held on TUESDAY 21 JUNE 2022 and held remotely at 7pm.

Present

Councillor Wise (Chair) Councillor Anifowose (Vice Chair) Councillors, Brown, Hayes, Huynh, Jackson, and Warner.

Apologies for absence were received from Councillors, Howard, Kestner, and Shrivastava.

Also Present

Richard Lockett – Senior Licensing Officer
Charlie Kenny – Lawyer

Merkur Slots, 95 Rushey Green Catford SE6 4AF

Philip Kolvin QC on behalf of the applicant

- Mr Andy Tipple, Head of Product for Merkur Slots UK Limited;
- Steve Ambrose, Operations Director for Merkur Slots UK Limited;
- Amanda Kiernan, Head of Compliance for Merkur Slots UK Limited
- Nick Mason, Leveche Associates
- Felix Faulkner, Poppleston Allen, Solicitor for the applicant

Représentations

Councillor Walsh
Robin Lee-Perrella
Florian Bohl

Fox and Firkin 15 Whitburn Road SE13 7UQ

Lenny Watson on behalf of the applicant

Representation

P.C Butler
One local resident

1. Minutes

RESOLVED that the minutes of the meetings of the Licensing Committee held on 28 April and 13 June 2022 be confirmed and signed.

2. Declarations of Interests

None.

3 Merkur Slots, 95 Rushey Green Catford SE6 4AF

- 3.1 The Chair welcomed all parties to the Licensing Committee. She introduced those present, and outlined the procedure to be followed for the meeting. She then invited the Senior Licensing Officer to introduce the application.

Senior Licensing Officer

- 3.2 The Senior Licensing Officer said that this hearing was in relation to a new premises licence application under the Gambling Act 2005 for Merkur Slots, 95 Rushey Green Catford SE6 4A. Three representations had been received on the grounds of the licensing objectives to prevent gambling from being a source of Crime & Disorder and to protect children and other vulnerable persons from being harmed or exploited by gambling.
- 3.3 The Senior Licensing Officer said that the applicant had offered a set of eight conditions that they believed would uphold the licensing objectives. He then outlined the powers available to members when making their decision.

Applicant

- 3.4 Mr Philip Kolvin QC addressed the Committee on behalf of the applicant. He made the following points:
- There had not been any objections from any responsible authority. The applicant had traded on a 24 hour licence for many years in Lewisham High Street. If there had been any problems with this business, Lewisham's licensing team would be aware of it.
 - The applicant had provided extensive uncontested evidence including detailed witness statements. A licence application had never been refused, the applicant had never suffered a regulatory intervention in any of the premises, there had not been an objection from the local authority and there was detailed independent evidence based on covert visits to the applicant's London premises.
 - The business is one of the largest gaming businesses on the high street, licensed by the gambling commission. Its systems to promote the licensing objectives were detailed and comprehensive. Staff were highly trained and well managed. The business was regularly audited and engaged by independent mystery shoppers and test purchasers.
 - The business had a first class record on crime and disorder which was due to strong systems and rules. Alcohol was not provided and this was one of the reasons why there was no loitering outside the premises. Children could not see into the premises and would not be allowed inside. With regard to vulnerable people, there were systems in place which had been approved by the gambling commission.
 - If the licence was granted, the business would be bound to the licence conditions and codes of practice, mandatory conditions imposed by government and conditions offered by the applicant following consultation with the Police.

- 3.5 Councillor Walsh said that the proposed business was located next to Kaspas's desserts, which was popular amongst young people. He asked for more detail about how the applicant intended to mitigate the risk towards children. Mr Kolvin said that his client had businesses all over the country which were located next to many different premises, McDonalds for example, which attracted children but he had not experienced any difficulties involving children at the premises. This was because, unlike other gambling establishments, no one could see into his client's premises. There were, however, posters warning that children under 18 years would not be admitted. Historically children had not been interested in the premises, because the machines were not attractive or noisy like seaside amusement arcades. The average age of patrons was over 30 years and the demographic was 50% female. The atmosphere did not attract children. Staff did not sit behind a counter so if a child tried to enter the premises, they would be escorted out immediately. There was no loitering at the premises. Clients came to play the machines for a while and then left. There was no reason for a child to interact with a client leaving the premises than for any other business.
- 3.6 Councillor Huynh said that one of the licensing objectives was protecting a vulnerable child from harm. Gambling can become addictive. He asked how the applicant defined problem gambling, how they identified problem gamblers and what safeguards they had in place. Mr Kolvin said that his client and the gambling commission defines problem gambling as someone who gambles more than they want to, can afford to or someone whose decisions regarding gambling were impaired. His client ensured that all the rules and regulations required by the Gambling Commission were in place. Inside the premises posters were displayed explaining that gambling should be for fun and if not, gamblers should stop. In addition the telephone number and website for the national problem gambling association was advertised. Mr Kolvin explained the rules of customer interaction and self-exclusion which were taken seriously by his client.
- 3.7 Councillor Hayes said that there were a lot of gambling establishments in Rushey Green. He asked why an application for a gambling premises had been made in this area. Mr Kolvin said that his client's business had expanded over the past two years. The premises had been chosen because the unit was appropriate for the business, the rent and lease terms had been a consideration, and there had to be some certainty that planning would be approved. In addition, there was sufficient footfall in the high street.

Representation

- 3.8 Mr Lee-Perrella said that he was a local resident, and strongly objected to the change of use of the property to an adult gaming centre for bingo and gaming machines. He said that there was already an adult gaming centre at 116 Rushey Green and many traditional gaming shops nearby. He named six gaming establishments in the local area. Rushey Green had a high level of anti-social behaviour mostly focused around gambling shops. If this application was granted, Mr Lee-Perrella believed that anti-social behaviour would increase. He said that the damage that gambling was having on our society was becoming clearer, he believed that Lewisham Council should be trying to reduce the number of

gambling establishments in the area. It heinously affected the areas of high deprivation

- 3.9 Members were advised that
- In 2019 the Department of Health and Social Care commissioned a review on the evidence of gambling. The economic burden of gambling on society was £1.27 billion in England in 2019/2020.
 - People at risk of harm from gambling were concentrated in areas of high deprivation.
 - According to the office of National Statistics, 16.4% of the population in Lewisham was income deprived in 2019. Out of 316 local authorities, Lewisham ranked 51st most income deprived .
- 3.10 Mr Lee-Perrella said that gambling-related harm ranged from financial, bankruptcy, employment and family issues and could lead to suicide. Rushey Green and the surrounding areas should not be given a facility where they lose money they didn't have. In addition there was the potential to develop a dangerous addiction that could cost the Council money and society an even worse toll. He recommended that the application be rejected and that members should take a moral and ethical stand by working towards the reduction in the number of gambling establishments and safeguarding the most vulnerable in the community.
- 3.11 Councillor Walsh said that he was the local ward councillor for Rushey Green and had received a number of complaints from local residents regarding the possibility of another gambling establishment in the area. It presented as a bingo hall but there were terminals inside the premises. It was located next to a children's facility, Kaspas. There was a cumulative and compound effect of having so many adult gaming centres in such a close area.
- 3.12 Councillor Walsh outlined the impact a gaming establishment could have on the area.
- Impact on children – this authority is responsible for protecting children from harm.
 - Patrons would stand outside the premises to smoke. This would be next to where children queue for the ice cream parlour adjacent to the premises.
 - The addiction service is a few hundred metres north of the site and the surrounding area is a deprived area. There are a number of local residents with additional needs.
- 3.13 Councillor Walsh asked where patrons would go should they wish to smoke. He also asked why it was considered appropriate to have a gambling establishment next to a facility for children, Kaspas was not similar to McDonalds it was a place where children could buy ice cream and where Disney films were shown. It should not be next to a gambling establishment.
- 3.14 Councillor Walsh said that in the presentation, members had been advised that the establishment would not be attractive to children. However, the games listed on the Merkur website were very colourful, full of child friendly games and activities. He drew members' attention to Cashino in Lewisham High Street, which was

another operation that the applicant had in the borough. He asked members to consider the impact on the High Street, the clientele it would attract, crime and disorder implications and the impact on children.

Conclusion

3.15 In summary Mr Kolvin highlighted the following points:

- The applicant occasionally received objections regarding things that could happen if a licence was granted. There was never any evidence to underpin those fears. These gambling shops operated throughout the country trading next to different establishments including child-centred facilities. Local authorities had not objected to the applications for a gambling licence because the establishments were well run.
- The issues that were irrelevant when considering an application for a gambling licence were set out in the report. The dislike of gambling or a belief that it was immoral were not a reason to refuse the application.
- Anti-social behaviour did not exist in the 220 other establishments managed by the applicant.
- Cumulative impact of gambling was not a concept in gambling licensing.
- Independent evidence had been submitted to prove that patrons did not smoke outside premises.
- Advertising and marketing outside the premises was not directed towards children.
- Mr Kolvin drew members' attention to the test governing the hearing at page 48 paragraph 30 which explained where a grant of a licence was mandatory.

3.16 In summary Councillor Walsh raised the following points:

- On the web it could be seen that there had been anti-social behaviour connected with Casino establishments. A report of knives being used at one of the premises in Liverpool for example, could be seen.
- The presentation was considered to have been misleading because the premises had been described as a haven.
- The suggestion that patrons would smoke outside the premises then return to gambling was a credible suggestion.
- Children would be at risk from harm because the premises was next to an ice-cream parlour that attracted children and who remained outside the premises particularly in the summer.

3, 17 Mr Bohl then joined the meeting. He was a local residents and opposed the application. He made the following points:

- Prevailing evidence proved that gambling facilities increased the risk of the destruction of social cohesion. He believed that the only way to prevent gambling addiction was not by displaying leaflets but by not having the facility in the first instance, particularly next to a children's facility.
- Posters outside the shop would be enough incentive for a child to want to enter the premises.

- Lewisham, as the borough of Culture 2021, should not be promoting gambling in such a prominent area as Rushey Green where there were already enough of these facilities.

3.18 The Chair said that deliberation would be made elsewhere and a decision letter would be sent out within 5 working days. She thanked all parties for their attendance, and they left the meeting.

4. Firkin Brewery Ltd 15 Whitburn Road SE13 7UQ

4.1 The Senior Licensing Officer said that this hearing was in relation to a new premises licence application made by Firkin Brewery Ltd, for the premises at 15 Whitburn Road SE13 7UQ. He outlined the application.

4.2 Three representations had been received from interested persons on the grounds of the prevention of Public Nuisance, prevention of Crime and Disorder, and Public Safety. Conditions were put on the application by the applicant; they had been reworded to meet the Council's model conditions and agreed by the applicant. The Police proposed extra conditions that they would like added to the licence, but these were not agreed by the applicant. A list of conditions that had been agreed and those that had not, had been circulated prior to the meeting. The Senior Licensing Officer then outlined the powers available to members when making their decision.

Representation

4.3 Ms Watson addressed the Committee on behalf of the applicant. She addressed the objections received from the Police.

- There was no record of P.C. Butler having sent the conditions. It could have been a mishap that they had not been received. Communication would not be ignored because it was important to the applicant that a premises licence was secured.
- The applicant agreed the conditions pending a few minor changes for clarification as discussed with the licensing team. He would be happy to liaise this with P.C Butler on the changes.

4.4 Ms Watson then addressed the objections raised by the planning team.

4.5 The concerns of the neighbours on Whitburn Road were addressed, the applicant was keen to resolve any issues. She clarified that the application was being made by Firkin Brewery; it was a separate entity to the Fox and Firkin Pub but they shared team members and a director. Under the proposed licence plan, the brewery would share a garden area with the pub.

- The Fox and Firkin Pub had tried to address noise issues. Letters had been delivered to local residents with details of senior management so that they could raise any issues.

- A WhatsApp group had been set up for residents to join so that any concerns could be raised and resolved quickly.
- The Fox and Firkin was a grass roots music pub on an inner London High Street in a densely populated area. They operated within all regulations but the service offered would produce sound.
- Over the past year, in an effort to mitigate noise, acoustic treatment had been undertaken at the pub and in the garden. The decibel levels were not known so it was difficult to ascertain whether the noise constituted a nuisance. However, it was accepted that any unwelcome noise suffered by residents constituted a noise nuisance.

4.6 The existence of a music establishment in an urban area was a nationwide issue. Ms Watson said that the Fox and Firkin was an important culture space in the borough and they were keen to work with neighbours to ensure that they continue to exist and provide an important cultural contribution to the local area.

4.7 The tap room area and the shared garden had already be used regularly and successfully, to serve drinks and play live music under a Temporary Event Notice. Neighbours should not expect the area to change much if the application was granted. Live music would be moved to the sheltered area rather than being in the open area so the sound would be moved further away from residential gardens. She encouraged any resident to contact management so that any issues could be resolved.

4.8 Councillor Brown said that if emails received from Police were not responded to, it did not look good to this Committee. He said that Police conditions had been circulated that day to all members of the Committee with the applicant's concerns in green. He asked whether this was the most up to date information. Ms Watson said that the conditions were up to date. She said that staff members monitor the email account and they had not received the emails from P.C. Butler. They had, however, been in constant contact with Ms Mullin-Murrell in the licensing team and were genuinely very responsive. She said that they would be willing to work with P.C Butler going forward.

4.9 Councillor Jackson, asked Ms Watson to explain the reasons why there were issues around some of the conditions requested by P.C Butler. Ms Watson outlined each condition.

- SIA door staff - The Fox and Firkin had one full time female trained SIA member. Generally they would be able to provide female door staff, however there were not many female members in the industry and it could be difficult, on occasions, to employ female members. Also, some SIA staff did not identify as male or female.
- Polycarbonate drinking vessels – These were used for busy events, but when it was quiet, a customer did not want to order a quality drink, a cocktail for example, in a polycarbonate cup.
- SIA staff should have a record book of banned people – Further clarification was required regarding specific information they would be required to hold.
- Use of the garden up until 10pm and use as a smoking area. These last three conditions were not in line with the timings that they had applied for.

Representation

- 4.10 P.C Butler said that he did not have any issues with emails sent or received. He had not heard from anyone from the brewery so he had to submit an objection to the application. The conditions, which included those that had not been agreed by the applicant, had only been served on him the day of this meeting, giving him little time to respond. He did not accept that the emails had been lost.
- 4.11 P.C Butler said that the application was supposed to be for the Firkin Brewery. However, most concerns were due to the fact that the land in between was attached to the pub. A variation should have been put in place for the land to be added to the garden. At a recent hearing of this Committee, an application for a Temporary Event Notice was considered. Extra conditions were agreed to address the concerns raised by the Police and local community.
- 4.12 P.C Butler explained the need for female door staff. This was to ensure that all patrons, regardless of their sexuality, had a choice as to who would search them before entering the premises. There could be a situation where only men were searched and females smuggled knives into the premises because they were not searched.
- 4.13 P.C Butler said that polycarbonate vessels were important because a member of staff had recently been bottled on the premises. Removing glass from public areas would prevent a repetition of this crime.
- 4.14 The Police and licensing team had received several noise complaints from neighbours. The Fox and Firkin was a live band venue, active in a garden three times the original size accommodating 200 patrons. The web site of the venue, documented the garden activities well and showed how loud the bands were.
- 4.15 P.C Butler said that there was a retirement home opposite the premises in Whitburn Road. The noise from the garden could have a detrimental effect on these elderly residents.
- 4.16 P.C Butler did not believe that the applicant had put forward any credible reason why all of the conditions that he proposed should not be approved in their entirety. This matter should have been discussed with him before this meeting and they had had plenty of time to contact him. The Police objected to this application on the grounds of noise nuisance and crime and disorder.
- 4.17 A resident of Whitburn Road then addressed the Committee. She said that she had lived in the area for many years and until 5 or 6 years ago there was no noise from the Fox and Firkin. Since then she had been subjected to loud music from the premises on most weekends and was unable to enjoy her garden during the warm weather.
- 4.18 The resident could not understand why permission was granted to play live music in a residential area. The current application was for an extended area that was closer to her home. She did not agree that the sound would be reduced for local residents.

- 4.19 The resident referred to the plan. It detailed the tented area, but it did not show the land next to it, which was probably 50% of the tented area again. It did not show any tables or chairs but she did not believe the area would be left clear.
- 4.20 The measures that the Fox and Firkin claimed to have been put in place had not made any difference to the level of noise. In addition, the first time the resident called the premises to ask for the music to be turned down, she was told 'No'. The resident wanted to be able to sit out in her garden without having to listen to the music from the premises. She accepted that neighbours had parties with music. It was not acceptable, however, to be subjected to the live music from the premises.

Conclusion

- 4.21 Ms Watson said that a colleague had sent their comments on the licensing conditions to the Licensing team on 25 May 2022. She agreed to copy P.C Butler in to any future correspondence with the licensing team. It had not been their intention to keep the Police out of any correspondence.
- 4.22 The capacity applied for would be in addition to present capacity. The brewery would have the capacity for 200 patrons, the operating capacity of the pub was separate to that and there would be a shared area. They were separate operating entities.
- 4.23 Ms Watson said that the music was located under the tent but it was designed to contain sound, it was in an area where there were more tall buildings and it was expected that the walls should enclose the sound more. She did not know where the resident lived but the music had been moved to an area where sound should be contained. She was sorry to hear about the resident's experience when she called the premises but hoped that she understood that management wanted to work with residents to mitigate any issues. She invited the resident to the premises to talk through any problems, The Fox and Firkin is a grass roots music venue but did not want to be a nuisance for their neighbours. They wanted to contribute to culture and create a space where artists could express themselves. This was difficult to navigate in a densely populated area.
- 4.24 In summary, P.C Butler said that the garden had increased three fold. It was located between the Fox and Firkin pub and the brewery. This would create a huge open space. Police had been to this garden to close the area because it was being used as a bar, when it should not have been, prior to the Jubilee celebrations.
- 4.25 There had been issues around communication with Police which had been a huge issue. P.C Butler said that his concerns were for the Police, the public and the local community. He did not believe that having live grass roots music in the garden would be in the interests of the public.
- 4.26 The Chair said that she was satisfied that Members of the Committee had read and heard all the information required to make a decision. Before Members left the meeting and proceeded to the vote, she needed to ensure that every Member who would be voting on this item had been present throughout and had no internet

disruptions. Each Member then confirmed that they had been present throughout this item and had heard all the evidence.

- 4.27 The Chair said that a decision letter would be sent out within 5 working days. She thanked all parties for their attendance, and they left the meeting.
- 4.28 Members confirmed that they had been present throughout the meeting and had not lost connection.

Exclusion of the Press and Public

RESOLVED that under Section 100 (A) (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12 (A) of the Act, as amended by the Local Authorities (Executive Arrangements) (Access to Information) (Amendments) (England) Regulations 2006 and the public interest in maintaining the exemption outweighed the public interest in disclosing the information:

3. Merkur Slots, 95 Rushey Green Catford SE6 4AF

4. Fox and Firkin 15 Whitburn Road SE13 7UQ

The following is a summary of the decisions made during the closed part of the meeting.

3. Merkur Slots, 95 Rushey Green Catford SE6 4AF

The premises licence was GRANTED.

4. Fox and Firkin 15 Whitburn Road SE13 7UQ

The application was GRANTED with a raft of conditions.

The meeting ended at 8.15pm

Chair