

**MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE
HELD ON WEDNESDAY, 4 NOVEMBER 2009**

COUNCILLORS

PRESENT John Boast, Christiana During and Peter Fallart

ABSENT

OFFICERS: Mark Galvayne (Principal Licensing Officer), Catriona McFarlane (Legal representative), Jane Creer (Democratic Services Secretary)

Also Attending: Mr Victor Ferdinandi (Director, Gaming & Leisure)

449

WELCOME AND INTRODUCTIONS

The Chairman welcomed all those present and introduced the Sub-Committee members.

450

DECLARATION OF INTERESTS

There were no declarations of interest in respect of items on the agenda.

451

APPLICATION UNDER THE GAMBLING ACT 2005

RECEIVED the report of the Principal Licensing Officer.

452

**PALMERS GREEN DINERS CLUB, PALMERS GREEN BUS GARAGE,
REGENTS AVENUE, PALMERS GREEN, N13**

RECEIVED an application by the Palmers Green Diners Club for a Club Machine Permit.

NOTED

1. All parties had received a copy of e-mail correspondence of 3 November 2009 and contemporaneous note from the Principal Licensing Officer.
2. Mark Galvayne confirmed that there had been no further communication from Poppleston Allen solicitors after the e-mail sent at 12:54 (e-mail 3).

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3. Mark Galvayne confirmed that there had been no further response or communication from Ms Milligan further to his telephone conversation at 15:21 on 3 November 2009.
4. Mr Victor Ferdinandi confirmed that he was a Director of Gaming & Leisure, the gaming machine supplier, and that Arriva Buses had appointed him as their representative though he had no written proof of that. Mr Ferdinandi advised that the application had been made on behalf of Patrick Ryan by Gaming & Leisure. The application had been completed and signed by Susan Bates, who was an Account Manager for Gaming & Leisure.
5. The Legal Officer's clarification that in the application, the details of the applicant were given as Patrick Ryan, Palmers Green Diners Club.
6. Mr Ferdinandi advised that Mr Ryan had retired since the application had been made. Mr Ferdinandi had been given to understand by Arriva Buses that Ms Milligan was chairman of the social club, though it appeared that this was not the case, or she was not aware. It had traditionally been the general manager who would be the social club chairman, across the bus garages in London. Arriva Buses would oversee all clubs in their garages. A meeting had been arranged for Friday 6 November between himself and Arriva Buses representatives to clarify this issue.
7. The Chairman's advice that the applicant was Palmers Green Diners Club, and despite a specific request, a member of the Committee of the Palmers Green Diners Club was not in attendance at this meeting, and that Mr Ferdinandi admitted to not having been appointed by the club. However, the Sub-Committee would consider a representation from Mr Ferdinandi and would decide how much weight to give to the evidence received.
8. The Legal Officer's advice that Mr Ferdinandi may apply for a further adjournment of the hearing to obtain fuller instructions from Palmers Green Diners Club.
9. The Chairman's advice that Mr Ferdinandi may wish to consider whether he was in a position to respond to queries in respect of accounts, auditor details, club committee and funding / expenditure.
10. Mr Ferdinandi advised that he had brought copies of documents detailing the type of facilities which all bus garages provided for their staff, but had not circulated these in advance of the hearing.
11. Mark Galvayne confirmed that no documentary evidence had been submitted in advance of the meeting in relation to the club's funding and expenditure.

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12. Mr Ferdinandi confirmed that he wished to proceed with the hearing today, and that he wished to table the documents.
13. The opening statement of Mark Galvayne, Principal Licensing Officer, including the following points:
 - a. This application was for a Club Machine Permit.
 - b. Gaming machines could be provided only in certain prescribed premises, which included members' clubs. The meaning of a members' club was set out in Section 266 of the Gambling Act, reproduced on page 7 of the agenda pack.
 - c. Having received this application from Palmers Green Diners Club, the club rules were received, as reproduced in Annex 01/02 of the agenda pack. The section on 'Income' was highlighted, which referred exclusively to income collected from gaming machines.
 - d. Enfield Council had raised a query with LACORS (Local Authorities Coordinators of Regulatory Services). Details were set out on page 18, and the full query and response set out on page 32 of the agenda pack.
 - e. LACORS advised that this sort of club was likely to fall foul of the legislation and would not qualify for a Club Machine Permit. This was the basis on which the Licensing Authority had made an objection.
 - f. An adjournment of the hearing was requested on 30 September 2009 as no member of the club was present and no accounts were provided so there was insufficient documentary evidence on which to make a decision. The adjournment notice and specific requests made by the Sub-Committee were set out on page 29 of the agenda pack.
 - g. An email received from Poppleston Allen, the solicitors retained by Gaming & Leisure, was set out on page 30/31 of the agenda pack, stating that they had spoken to "the new chairperson, Helen Milligan" and providing a set of indicative figures. Attention was drawn to comments made by Ms Milligan when contacted by phone by Mark Galvayne on 3 November and set out in the contemporaneous note provided to all parties prior to the meeting. In the light of this, the indicative figures given were not considered to be acceptable as documentary evidence.
 - h. In the absence of audited accounts, the club could have provided other documentary evidence: the name and address of the club's auditors; the minutes from the club's last AGM; copies of the club's bank statements and cash book; and copies of club members' subscription books/receipts. None of that documentation had been provided, and Mr Ferdinandi was not in a position to provide it today.
 - i. The documents tabled by Mr Ferdinandi set out profit and loss figures from another club (Metroline Sports & Social Club), and would not assist in answering queries regarding the Palmers Green Diners Club.
 - j. The Licensing Authority continued to contend that the Palmers Green Diners Club would not qualify as a members' club under Section

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266 of the Gambling Act 2005, and that this application should be refused.

14. Mark Galvayne responded to questions as follows:
 - a. In response to the Chairman's query, it was confirmed that at the time that LACORS were consulted, Enfield Council had only received the application form and club rules. He confirmed that the actual query submitted was as set out in italics on page 32.
 - b. In response to Mr Ferdinandi's query regarding grounds for acceptance as a members' club under Section 266 of the Gambling Act 2005, it was confirmed that the Licensing Authority objected only on criteria (a) as the club had failed to show that it was established and conducted wholly or mainly for purposes other than the provision of facilities for gaming. Documentary evidence of the social benefits to staff members had not been provided. It was for the Sub-Committee to determine the weight given to LACORS' advice.
15. The opening statement of Mr Ferdinandi, Director of Gaming & Leisure, including the following points:
 - a. He understood that under the 1968 Gaming Act and 2005 Gambling Bill there were three grounds on which a Council could refuse a Club Machine Permit: a members' club must have more than 25 members, must not be temporary in nature, and must be for purposes other than gaming.
 - b. This club had been in existence for more than 10 years and had one gaming machine in the canteen, the profit from which was £30 to £40 per week. If this was relied on for financial gain the club would be unviable. The purpose was to provide benefits for members and a social environment.
 - c. Other bus garages provided similar facilities, with such clubs set up for members and not purely for gambling.
16. Mr Ferdinandi responded to questions as follows:
 - a. In response to the Chairman's queries regarding other costs incurred by the club, Mr Ferdinandi advised that the club had other expenditure on raffles, staff parties and outings. Arriva Buses provided funds towards these, though not the total amount, rather they made up the shortfall.
 - b. The Chairman highlighted information provided by Poppleston Allen in the email reproduced on page 30/31 of the agenda pack regarding the club's profit, subscriptions income and that in addition, Arriva provided funds for the parties and excursions. Mr Ferdinandi advised that to his knowledge the information given was incorrect, but that such aspects were not mentioned in the Gambling Act with regard to granting of permits.
 - c. In response to the Chairman's further queries relating to failure of a committee member to attend the hearing, Mr Ferdinandi advised that the person they understood to be the new chairperson was Ms Helen

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Milligan. She had not been contactable until recently as she had been on holiday, and she had been unable to get away from her duties to attend today, and no other committee members were available. The organisation of the club appeared poor and this was something he was seeking to address. The club did not have an auditor and did not need one. No-one could find any record of accounts and it was likely that none had been kept. There were no details of bank accounts or banking arrangements.

d. Councillor Fallart queried the documents tabled, which referred to a different bus company and a different bus garage. Mr Ferdinandi advised that he wished to present them as a general indicator of this type of social club and the sort of facilities provided, and to support the fact that these clubs were not set up purely for gambling. The various current bus companies in London were originally a single company.

e. In response to Mark Galvayne's question regarding income from the present gaming machine, Mr Ferdinandi confirmed that the net profit averaged £30 to £40 per week once rental cost and licence duties had been paid.

f. Mr Ferdinandi agreed that Mark Galvayne was correct in his assertion that therefore the members did not need to pay subscriptions, and that the only income referred to in the rules of the club was income from gaming machines.

17. The closing statement of Mark Galvayne, Principal Licensing Officer, including the following points:
 - a. The only income provided for in the club rules was from gaming machines.
 - b. There was no evidence that any member had ever paid club subscriptions, and therefore he must assume that 100% of the club's income was from gaming machines.
 - c. The Licensing Authority continued to contend that the club was established and conducted wholly or mainly for purposes of providing gaming machines to its members and, as such, the club was not a members' club for the purposes of the Gambling Act 2005, and urged the Sub Committee to refuse this application.

18. The closing statement of Mr Ferdinandi, Director of Gaming & Leisure, including the following points:
 - a. The 2005 Gambling Act did not state that the financial income of a club was relevant to granting or refusal of applications, and a decision should not be subject to that.
 - b. The Palmers Green Diners Club was not set up for financial gain and gambling. As in other bus garages the club was designed to provide benefits to members, not for gaming. No one benefitted financially from the machines; all funds were used for the members.

RESOLVED that

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1. in accordance with the principles of Section 100(A) of the Local Government Act 1972 to exclude the press and public from the meeting for this item of business on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A to the Act.

The Panel retired, with the legal representative and committee administrator, to consider the application further and then the meeting reconvened in public.

2. The Chairman made the following statement:

“We have considered all the evidence presented to us today. For this club to be eligible to be a members’ club falling within Section 266 of the Gambling Act 2005 we must be satisfied that it is established and conducted wholly or mainly for purposes other than the provision of facilities for gaming. At the previous hearing evidence proving the club’s eligibility to the satisfaction of the Sub-Committee was not provided. The meeting was therefore adjourned to enable the club to provide such evidence.

At today’s hearing none of the evidence requested has been provided and some of the written documentation provided by solicitors acting for Casino Coin Ltd, trading as Gaming & Leisure, has been shown to be inaccurate.

The above, coupled with the only reference to income in the club’s rules being by way of gaming machines, lead us to find that the applicant has failed to satisfy us that the club is established and conducted wholly or mainly for purposes other than the provision of facilities for gaming and therefore the application is refused.”