



LEGAL

Clifton Davies Consultancy Ltd

Clifton Davies Consultancy Limited specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. The views expressed by David Clifton and Suzanne Davies are given without any assumption of liability on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct. **E:** dc@cliftdavies.com / sd@cliftdavies.com **W:** cliftdavies.com

Machine machinations?

Suzanne Davies advises how to improve your prospects of obtaining more gaming machines in your pub or bar

You will probably have come across the pub industry media headlines from the end of August, reporting on the interim refusal by Birmingham Licensing Sub-Committee to allow JD Wetherspoon to install one more category C gaming machine (the old AWP machine) in its Perry Barr pub, The Arthur Robertson.

The pub already had four such machines and plenty of space for a fifth. There was no objection from Birmingham City Council Licensing Enforcement, who were happy with the proposed location of the additional machine. As one would expect, JD Wetherspoon supported its application with a set of policies and procedures addressing each of the three licensing objectives under the Gambling Act 2005.


According to the council's official approved minutes, the stated reason for the proposed refusal was: "Concerns regarding the impact of the proposed operation, given that the premises is a public house frequented by families and therefore children. The Sub-Committee was mindful of the promotion of the licensing objectives, particularly protecting children and other vulnerable [people]."

However, some greater insight into councillors' thinking is contained in the following comments attributed in a local newspaper report to one of the members of the Sub-Committee: "Too many [machines] are being put into these places and they are ending up becoming amusement arcades with drink licences. You walk into them and I don't know how people with epilepsy cope. I know people addicted to playing these things, they try and sit in a pub where they are away from them but they are everywhere. You can't sit somewhere without something flashing in your eyes. Having them all over the place is not on. I know people who go through a lot of money on these. I also notice pubs selling the cheapest beers have got the most machines. They entice people in with the cheap beer and make the money back on the bandits."

Misplaced though those comments may have been, what this has shown is that any pub or bar operator applying for a gaming machine permit in order to site more than two category C or D gaming machines in their premises needs to take account of the probability that a combination of the betting shop FOBT controversy of the past few years, recent negative media reports about problem and under-age gambling, and growing calls for less gambling advertising on television will have flavoured councillors' views about gaming machines in pubs too. JD Wetherspoon's policy and procedures document was eight years old, so will have been drafted well before the public mood shifted against gambling as far as it now has.

My advice is that before making such an application, you should carefully read the Gambling Commission's 'Gaming machines in pubs' leaflet and its 'Code of practice for gaming machines in clubs and premises with an alcohol licence' (both available on its website). Also, support your application with a carefully argued explanation of (a) the proposed location and means of supervision of the machines, (b) the procedures that will be adopted to prevent under-age gambling, (c) signposting for problem gambling support services (e.g. GambleAware or GamCare, and importantly (d) who will take responsibility for compliance with the above code of practice.

Since writing this article, the Gambling Commission has announced that a test purchase operation has shown that almost 90% of pubs tested failed to stop children from using Category C machines, underlining the importance of gaming machine supervision in pubs.

If you need any help with this, you know where to find me. 

QUESTIONS & ANSWERS

Q: What has the government announced about tips?

A: New legislation will be introduced "at the earliest opportunity" requiring that tips go to the workers who are providing the service, saying that "while most employers act in good faith, in some sectors evidence points towards poor tipping practices, including excessive deductions being made from tips left by customers". This follows a public consultation commenced in May 2016 that showed restaurant customers to be overwhelmingly in favour of the tips they pay being received by the people who serve them.

Q: My application to transfer a premises licence into my name has been refused because I didn't serve it on the Home Office. Is that right?

A: Assuming you sent in your application by post, strictly speaking the answer is yes. Had you submitted it online, the licensing authority would have forwarded it on your behalf. Since April 2017, Home Office (Immigration Enforcement) – at Alcohol Licensing Team, Lunar House, 40 Wellesley Road, Croydon, CR9 2BY – has been added to the list of responsible authorities in the licensing regime. It must receive premises licence applications, transfer applications and variation applications (except where they are for regulated entertainment only). This was just one part of a series of measures intended by the government to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment.

Q: What's the latest news on the Pubs Code?

A: Firstly, the six pub companies in question are now publishing on the BBPA's website monthly data on responses to market rent only (MRO) applications from tenants and the outcomes of those. Secondly, Greene King's application for judicial review of the PCA's advice note on MRO-compliant proposals was refused by the High Court following which Greene King confirmed that, while it remains dissatisfied with elements of the Pubs Code, recent discussions between the PCA and the pub companies have been more productive, including the waiving of confidentiality rights by the pub companies, so no appeal is anticipated.