

**Application for the Grant of an Amusement Permit –  
Players, 22-23 Shaftesbury Square**

The Committee considered the following report:

**“1.0 Purpose of Report/Summary of Main Issues**

- 1.1 To consider an application from Ms. Kerry Boyle of KB Shaft Limited, for the grant of an Amusement Permit under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 ('the 1985 Order').**

<b>Premises and Location</b>	<b>Ref. No.</b>	<b>Applicant</b>
<b>Players</b>	<b>WK/20160593</b>	<b>Ms. Kerry Boyle</b>
<b>Ground Floor</b>		<b>KB Shaft</b>
<b>22-23 Shaftesbury Square</b>		<b>Limited</b>
<b>Belfast</b>		
<b>BT2 7DB</b>		

- 1.2 The Director of KB Shaft Limited is Ms. Kerry Boyle.**
- 1.3 A copy of the application form has been circulated to the Committee.**
- 1.4 A location map has also been circulated.**

**2.0 Recommendations**

- 2.1 The 1985 Order states that the Committee, in considering the application for the Grant of an Amusement Permit, shall have regard to:**
- 1. the fitness of the applicant to hold a Permit having regard to his character, reputation and financial standing,**
  - 2. the fitness of any other person by whom the business is to be carried on under the Permit would be managed, or for whose benefit that business would be carried on,**
  - 3. representation, if any, from the sub-divisional commander of the Police Service of Northern Ireland in whose sub-division the premises are situated, and**
  - 4. representation, if any, as a result of the public notices of advertisement.**

**2.2 You must refuse the application unless satisfied that:**

- 1. the applicant is a fit person to hold an Amusement Permit; and**
- 2. the applicant will not allow the business proposed to be carried on under the Amusement Permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an Amusement Permit.**

**2.3 Thereafter:-**

- 1. You may refuse the application after hearing any representations from third parties, or**
- 2. You may grant the application, subject to the mandatory condition that the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character, and**

**2.4 In the case of premises that have machines with the maximum cash prize of £25.00, where admission is restricted to persons aged 18 or over that –**

- no persons under 18 are admitted to the premises; and**
  - at any entrance to, and inside any such premises there are prominently displayed notices indicating that access to the premises is prohibited to persons aged under 18, and in addition**
- 3. You may also grant the application subject to discretionary conditions outlined in the 1985 Order relating to the illumination of the premises, advertising of, and window displays on the premises and the display of information notices.**

**2.5 Should you be of a mind to refuse the application for the grant of an Amusement Permit or grant the Permit subject to any discretionary conditions, you are required to advise the applicant of your intention to do so. In this case you must afford the applicant the opportunity to make representations at a specified Licensing Committee meeting on the matter before making a final determination of the application.**

**2.6 If, subsequent to hearing the applicant, you refuse the application for the Grant of an Amusement Permit or decide to grant the**

application subject to discretionary conditions the applicant may appeal that decision to the County Court.

**3.0 Main report**

**Key Issues**

- 3.1** Members are reminded that the Licensing Committee is responsible and has full delegated authority for determining all applications relating to the grant and provisional grant of Amusement Permits.
- 3.2** Members may be aware that an arcade has operated at 22 Shaftesbury Square since 1994 under previous ownership, formerly known as Winners, but was recently granted to KB Shaft Limited at your meeting on 19th August 2015.
- 3.3** As there is no mechanism within the 1985 Order to cater for the extension to an existing premise, as is happening in this case, an application must be made for the grant of an Amusement Permit for the ground floor of 22-23 Shaftesbury Square.
- 3.4** The current Amusement Permit for 22 Shaftesbury Square is due to expire on 31st July, 2016.

**Applicant**

- 3.5** The applicant has requested to operate the proposed premises under the same hours as the existing Amusement Permit for 22 Shaftesbury Square from 9.00 am to 3.00 am, Monday to Sunday.
- 3.6** The permit is for a total of 94 gaming machines, all of which are to pay out a maximum all cash prize of £25.00. In the case of premises which have machines with a maximum cash prize of £25.00 admission is restricted to persons aged 18 or over. This is an increase of 64 machines as the current Amusement Permit is for a total of 30 gaming machines. However, the applicant has confirmed that they are willing to reduce the number of machines, if required.
- 3.7** Ms Boyle and/or her representatives will be available to discuss any matters relating to the grant of the permit at your meeting.

**Health, Safety, Welfare and Technical requirements**

- 3.8 Officers from the Service have met with the applicant to discuss the application and status of the premise. The applicant has confirmed that a Building Regulations application will be made to the Service for the building work that will be required to create the new arcade layout.

**Planning Matters**

- 3.9 A planning application was made to the Planning Service on the 3rd April 2014 for a change of use of the ground floor of No. 23 to an Amusement Arcade including an extension and frontage alterations to allow for the amalgamation with No. 22 Shaftesbury Square. This was granted on the 5th January 2015.
- 3.10 A copy of the planning permission has been forwarded to Members.
- 3.11 The Committee may be aware that in an important Court of Appeal decision in June 1999, it was confirmed that the Council, in determining applications for Amusement Permits, may take into account planning considerations but should be slow to differ from the views of the Planning Authority.
- 3.12 The Court also confirmed that the Council can take into account matters such as location, structure, character and impact on neighbours and the surrounding area.

**Amusement Permit Policy**

- 3.13 Members will be aware that the Council's Amusement Permit Policy was ratified at Council on 1st May 2013. It outlines those matters which may be taken into account in determining any application and indicates that each application must be assessed on its own merits.
- 3.14 The key Policy objectives are to:
1. Promote the retail vibrancy and regeneration of Belfast;
  2. Enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage;
  3. Support and safeguard residential communities in Belfast;
  4. Protect children and vulnerable persons from being harmed or exploited by gambling;

**5. Respect the need to prevent gambling from being a source of crime and disorder.**

- 3.15 The Policy consists of two components which are considered below:**

**1. Legal requirements under the 1985 Order**

- 3.16 Members must have regard to the legal requirements under the 1985 Order relating to:**

**(a) The character, reputation and financial standing of the applicant:**

- 3.17 References and additional supporting information for those associated with the application have been circulated to Members.**

**(b) The nature of the premises and activity proposed:**

- 3.18 To ensure that the nature of the premises proposed is suitable for this location Members may consider how the premises are illuminated, the form of advertising and window display, and how notices are displayed on the premises. Whilst the appearance of amusement arcades is considered a planning matter, Members may still wish to be satisfied that the façade integrates with adjacent frontages.**

**(c) Opinions of the Police:**

- 3.19 The Police comments have been sought and reference is made in paragraph 3.9 of the report and have been forwarded to Members.**

- 3.18 (d) Submissions from the general public:**

- 3.20 No objections have been received as a result of the public notices placed in three local newspapers.**

**2. Assessment criteria for suitability of a location**

- 3.21 There are five criteria set out in the Policy which should typically be considered when assessing the suitability of a location for an amusement arcade. These are detailed below as they relate to this application.**

- 3.22 Before considering each of these criterion it should be noted at the outset that this is a grant application because of a proposed**

extension to the existing arcade to incorporate the adjacent vacant unit

**(a) Retail vibrancy and viability of Belfast:**

- 3.23** The application site at 22-23 Shaftesbury Square is located outside the Retail Core of Belfast City Centre but within the limit of the City Centre, as defined in the Belfast Metropolitan Area Plan 2015 (BMAP). It is bordered on one side by the South Belfast Northern Ireland Supporters Club, and on the other, by a vacant retail unit (formerly Age Concern), which forms part of the 'Lesley House' commercial building. Because the premises are not bordered on both sides by a retail unit it cannot be concluded that the application would break up a continuous shopping frontage.

*Complies with this criterion.*

**(b) Cumulative build-up of amusement arcades in a particular location:**

- 3.24** In addition to the existing Players arcade at No. 22 Shaftesbury Square, which forms part of this application, there is another amusement arcade operator on this commercial frontage, namely Oasis Gaming. It operates from a number of units located at 14 Shaftesbury Square and 1-7 Donegall Road. This amounts to the largest concentration of Amusement Centres found within a commercial block in Belfast.
- 3.25** In the desire to promote retailing in the City Centre, as per the first key objective of the Amusement Permit Policy, the Council is keen to avoid a clustering of Amusement Centres at a given location. Accordingly, it restricts new openings to one per commercial frontage and one per shopping centre. It also restricts the ground floor extension of an existing establishment into an adjoining unit.
- 3.26** While the Council recognises that this commercial block currently has a high rate of vacancy (including the application site at No.23) the Council also acknowledges that it is a Gateway location with landmark development potential (see next criterion), an element of which could involve retailing.
- 3.27** Mindful of the above, therefore, this application to extend an existing Amusement Centre into another shop unit runs counter to the cumulative build-up criterion.

*Does not comply with this criterion.*

(c) Impact on the image and profile of Belfast:

- 3.28 As noted above, the application premises are located at a key entrance junction (Gateway) to the City Centre, as identified in the BMAP 2015. This is one of 11 Gateway locations at the edge of Belfast City Centre which, as recognised in the Development Plan, presents the visitor with an initial impression that can influence their overall perception of the City. Accordingly, BMAP considers these locations suitable for landmark development capable of raising the profile of Belfast. Indeed, one of the four elements of BMAP's tourism strategy reads as follows:

“enhancing the urban environment generally and, in particular, ‘first impression’ points at major gateways, and in city and town centres.”

- 3.29 Within this context, and in recognition of the Amusement Permit Policy's objective to enhance the appeal of Belfast by protecting its image, the Council considers the granting of Amusement Permits at ground floor level as inappropriate for this and other Gateway locations.

*Does not comply with this criterion.*

(d) Proximity to residential use:

(i) - predominantly residential in character

- 3.30 The application premises are located at ground floor level at Shaftesbury Square where a mix of commercial uses exists. They are therefore located within a part of the City Centre which is predominantly commercial as opposed to residential in character.

(ii) – non-residential property that is immediately adjacent to residential property

- 3.31 The residential properties located nearest to the application site are St. George's Gardens, which are located approximately 20.5m to the rear of the application site and separated from it by Stroud Street. Residential property is not therefore located immediately adjacent to the application premises.

*Complies with this criterion.*

(e) Proximity to schools, youth centres, and residential institutions for vulnerable people:

- 3.32 There are no schools, youth centres, or residential institutions for vulnerable people within 200m of the application premises.

*Complies with this criterion.*

- 3.33 A copy of the Council's Amusement Permit Policy has been circulated to the Committee.

**Conclusion**

- 3.34 The application does not comply with all assessment criteria for the suitability of the location as laid down in Belfast City Council's Amusement Permit Policy. Planning Service was made aware of this when determining the planning application but it still chose to approve it, citing planning policy and guidance, particularly DCAN 1.

- 3.35 The Amusement Permit Policy does permit the Committee to depart from the Policy where it appears appropriate or necessary, although it goes on to state that it is envisaged that would only happen in exceptional circumstances.

- 3.36 **Financial and Resource Implications**

There are no financial or resource implications associated with this report.

- 3.37 **Equality or Good Relations Implications**

There are no equality or good relations issues associated with this report."

The Committee was advised that Ms. K. Boyle, the applicant, together with Ms. R. Hughes and Mr. F. O'Reilly, her legal representatives, and Mr. I. Foster, Planning Consultant, were in attendance and they were welcomed by the Chairperson.

Mr. O' Reilly informed the Members that the applicant operated two amusement arcades in the City, on the Lisburn Road and in Shaftesbury Square. He then addressed the issues surrounding the failure of Ms. Boyle's application to comply with two of the five criteria set out within the Council's Amusement Permit Policy, in terms of the impact which the arcade would have upon the image and profile of Belfast and in relation to the cumulative build-up of arcades around that particular location.



He pointed out that, on approaching Shaftesbury Square, there was currently an amusement arcade on the corner of the Donegall Road and Shaftesbury Square, which was managed by another operator. The applicant's premises were situated a short distance away, beside a retail unit, which had been vacant for a considerable length of time, into which she wished to extend her business. Ms. Boyle's architect had formulated plans which would allow for the amalgamation of the two premises, which would have a single frontage and entrance. The applicant was proposing to increase the number of gaming machines from thirty to sixty, rather than ninety-four as had been stated on her application, and to create a 'comfort area', without machines, for the benefit of customers.

He reminded the Committee that, in August, 2015, it had granted an Amusement Permit for Ms. Boyle's current arcade in Shaftesbury Square, despite the fact that the same issues had existed around, for example, image and profile and its gateway location as applied to this application. The refusal of her current application by the Committee would, he argued, have no impact in terms of improving the topography of the area and the view which visitors entering the City through Shaftesbury Square would encounter.

Mr. O'Reilly reminded the Committee further that the Planning Service had, in January, 2015, approved an application for the change of use of the vacant unit to allow for its incorporation into his client's arcade, despite being advised by the Council that it failed to comply with the same two criteria as the application which was now before the Committee. He made the point that the Planning Service, in granting the application, had taken the view that it was preferable for the premises to be utilised as an extension of the adjoining amusement arcade, rather than remain vacant. He concluded by urging the Committee to take into account the fact that the number of arcades in Shaftesbury Square would not be increased by approving his client's application and that it would only enhance the area by a bringing a vacant unit back into use.

In response to a number of questions from the Members, Ms. Boyle confirmed that the provision of a 'comfort area' was designed to enhance the experience of customers and highlighted another premises in Castle Street which provided such a facility. She explained that, due to the lack of available space, she was unable to provide such an area within her current arcade, however, as highlighted within her architect's plans, approximately half of the proposed extension would be utilised for that purpose. She accepted that her application form had indicated that there would be ninety-four gaming machines within the amalgamated arcade but pointed out that that figure had been calculated by the architect, based upon using all of the available floor space, and had not taken into consideration her proposal to include a 'comfort area'.

The members of the deputation were thanked by the Chairperson and they returned to the public area.

It was reported that Dr. T. Quinn, Braniff Associates, who had assisted the Council in the formulation of its Amusement Permit Policy, was in attendance, should the Committee wish to seek clarification on any issues surrounding the Policy and its application.

The Committee agreed that it would be beneficial to obtain the views of Dr. Quinn and he was welcomed by the Chairperson.

Dr. Quinn explained that the cumulative build-up criterion had been included within the Council's Amusement Permit Policy with a view to controlling arcade numbers within any given location and encouraging other forms of retail development. He pointed out that Shaftesbury Square was situated within the City Centre, albeit that it was outside the retail core, and that it was one of eleven recognised gateways leading into the City. Whilst there were currently a considerable number of vacant properties in that locality, it had been earmarked for landmark development and he suggested that the Committee, in considering the application, should, in terms of its image and profile, take into account not only the current state of the location but also its future potential.

Dr. Quinn then addressed a number of issues which had been raised by the Committee.

In terms of potentially encouraging dereliction within Shaftesbury Square by refusing the application on the basis of the Amusement Permit Policy, he explained that the Council, when formulating the Policy, had sought to align it closely with the Belfast Metropolitan Area Plan, which had identified Shaftesbury Square as being a first impression point for visitors entering the City. The Policy had, with that in mind, sought to limit the number of amusement arcades to one per commercial frontage and per shopping centre and to prohibit the merger of an existing establishment into an adjoining unit, as was the case with this application. He stressed that, should the Committee be minded to grant the application on the basis that it could, as a Member had suggested, assist in revitalising the area in the short-term, it would be departing from the Policy, which should occur only in exceptional circumstances. He added that that could create a precedent which other arcade operators across the City could potentially utilise in the future for their benefit.

The Building Control Manager explained that the Council had, in 2014, as part of the consultation process, informed the Planning Service that the application to extend the amusement arcade into number 23 Shaftesbury Square contravened two of the criteria set out within its Amusement Permit Policy and had requested it to take that into consideration. However, the Planning Service had chosen not to do so and had granted the application for other reasons. The matter had then been placed before the Town Planning Committee and, subsequently, the Council and the Council had agreed to reject the opinion of the Planning Service to approve the application.

In response to a point from a Member regarding the impact of a decision to approve the application, the Divisional Solicitor confirmed that the Amusement Permit Policy permitted a departure from the Policy in exceptional circumstances. However, the Committee should be clear as to the exact nature of those circumstances which, regarding this application, she suggested might revolve around the fact that there were no issues with the applicant, she was licensed to operate in the adjoining premises and that she wished to expand into a vacant unit. It was, ultimately, up to the Committee to decide if those circumstances could be deemed to be exceptional and whether they would create a precedent.

She drew the Members' attention to a Court of Appeal decision in 1999 in respect of the Council's decision to refuse an application by Ava Leisure Limited for the grant of an Amusement Permit to operate an arcade in Ann Street, which had ruled that the Council could depart from the views of the planning authority but should be slow to do so. She explained that that application was broadly similar to Ms. Boyle's, in that Ava Leisure Limited had obtained planning permission to operate an amusement arcade in a vacant unit in Ann Street which, at that time, had been a rundown area of the City. The Court of Appeal had, in its decision, made reference to the fact that Ann Street was a gateway to the City and had considered whether the presence of an amusement arcade therein would have an impact upon the public entering the City by that route.

The Divisional Solicitor referred also to the point which had been raised by the applicant's legal representative around the Amusement Permit which Ms. Boyle had, in 2015, been granted for her existing arcade in Shaftesbury Square. She highlighted the fact that the Committee had, in that instance, exercised its discretion, as that application had, technically, contravened the Amusement Permit Policy, however, since the premises had already been in existence, officers had recommended that the Committee grant the application in those circumstances.

After consideration, it was

Moved by Councillor Heading,  
Seconded by Councillor Brown and

Resolved - That the Committee, in its capacity as Licensing Authority, agrees that it is minded to refuse an application for the grant of an Amusement Permit in respect of Players, 22-23 Shaftesbury Square, on the grounds that it fails to comply with two of the five criteria set out within the Council's Amusement Permit Policy in terms of (i) the cumulative build-up of amusement arcades in a particular location and (ii) the impact of the arcade upon the image and profile of Belfast.

Subsequent to the decision having been taken, Mr. O'Reilly requested that the Committee offer him the opportunity to raise an issue around the way in which the representations surrounding the application had been managed.

The Chairperson, upon the recommendation of the Divisional Solicitor, agreed to exercise his discretion in this instance and to accede to Mr. O'Reilly's request.

Mr. O'Reilly explained that he had been afforded by the Chairperson only five minutes in which to put forward his client's case, whilst Dr. Quinn had taken fifteen minutes to deliver his submission. That, he argued, had implications in relation to the administration of natural justice and he confirmed that a transcript of the recording of the meeting would be produced in the County Court when the Committee's decision was being appealed.

In response, the Divisional Solicitor confirmed that the deputation had been informed that they would be allocated in total five minutes in which to address the Committee and that they would be afforded an opportunity thereafter to answer any questions which Members might wish to raise. She added that Dr. Quinn's initial

presentation had been brief and that it had not exceeded five minutes. However, he had, subsequently, provided clarification on a number of points which had been raised by the Committee.

Mr. O'Reilly then added that he took exception to the Divisional Solicitor pointing out to him the relevance of the Ava Leisure Limited Court of Appeal decision, given that he had been involved in that case and that it had been heard a considerable length of time before she had qualified to practice as a solicitor.

The deputation then retired from the meeting, following which several Members condemned the comment which had been directed at the Divisional Solicitor by Mr. O'Reilly in relation to the Court of Appeal decision.

The Committee noted that, in accordance with the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, the applicant would be afforded the opportunity to make representation to the Committee regarding its decision at a future meeting.

Chairperson