

IN THE MATTER of the Gambling Act 2003

AND on an appeal by **THE SOUTHERN TRUST – THE RIVERSDALE HOTEL**

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
R D Bell
D C Matahaere-Atariki

Date of Decision: 13 February 2015

Date of Notification of Decision:  March 2015

DECISION ON AN APPEAL THE SOUTHERN TRUST – THE RIVERSDALE HOTEL

Introduction

1. The Southern Trust (the "Appellant" or "TST") appealed, under section 77(1)(b) of the Gambling Act 2003 (the "Act"), against a decision by the Secretary for Internal Affairs (the "Secretary") to impose a special licence condition on the class 4 venue licence for the Riversdale Hotel in Southland.
2. The condition imposed is as follows:

The external entrance from the hotel's rear car park, that provides access directly into the gaming machine area, must remain closed and locked at all times that the gaming machines are in operation, and may only be used to meet fire, health and safety regulations specific to the venue.
3. The Secretary imposed the condition pursuant to sections 67 and 70 of the Act because he was not satisfied that the possibility of persons under 18 years of age gaining access to class 4 gambling at the venue was minimal. The Appellant requested that the Commission reverse the Secretary's decision or, in the alternative, that the condition be varied to incorporate the use of new technology, which it had proposed. The Secretary submitted that the Commission should confirm his decision.



Visit to the Venue

4. The Commission visited the venue in February 2015. The purpose of the visit was to gain an impression of the venue's layout and operating practices in order to understand better the information that had been provided to the Commission in the evidence and submissions filed. The visit was unaccompanied by representatives of either party and conducted as a member of the public.

Relevant law

5. The relevant sections of the Act are:

67 Grounds for granting class 4 venue licence

- (1) The Secretary must refuse to grant a class 4 venue licence unless the Secretary is satisfied that—
 ...
 (b) the possibility of persons under 18 years old gaining access to class 4 gambling at the class 4 venue is minimal; and

70 Content and conditions of class 4 venue licence

- ...
 (2) The conditions that the Secretary may add to a class 4 venue licence include—
 (b) conditions to minimise the possibility of persons under 18 years old gaining access to class 4 gambling at the class 4 venue:
 ...
 (g) procedures to encourage responsible gambling at the venue:
 ...
 (i) any other conditions consistent with this Act that the Secretary considers will promote or ensure compliance with this Act.

Appellant's submissions

6. The Appellant submitted, in summary, as follows:
- (a) The Commission has considered this type of appeal on a number of occasions, with its first decision, GC16/06, providing an applicable framework for the imposition of licence conditions.
- (b) Most of the entrances referred to in the previous Commission decisions were secondary entrances, or entrances that were near to the main entrances. This venue is perhaps unique in that the entrance in question is the primary entrance for patrons arriving by car.
- (c) The basis of this appeal rests upon a new technological solution that has not previously been considered by the Commission. Its proposal is for a "virtual door". That is, it proposes to install a large HD television screen which would display a live feed from a camera which would be directed at the external door.

The television would be located in an unimpeded position at the end of the bar and very close to the main serving area. Such an arrangement distinguishes it from other closed circuit television systems.

- (d) The virtual door would still rely upon staff diligence, but the key difference is that the screen would be front and centre for bar staff, and would replicate the view that they would have from the bar serving area.
- (e) The virtual door addresses previous concerns expressed by the Commission about the poor quality of CCTV footage.
- (f) Applying the framework set out by the Commission in GC16/06, it considered the following:

In the absence of the condition, are the measures in place sufficient to satisfy the Commission that the possibility of minors gaining access to class 4 gambling at the venue is minimal?

- (g) The distinguishing feature of this appeal is the virtual door. If the Commission accepts this feature, then the special licence condition could be varied to allow for its inclusion.
- (h) It accepts that without the virtual door, the external entrance in question cannot be seen directly from the main bar serving area. However, there are a number of factors which indicate that the possibility of minors gaining access to class 4 gambling at the venue is already minimal, including:
 - (i) the venue is in a small, rural community of fewer than 400 people;
 - (ii) the layout of the venue has been the same for 11 years, without incident;
 - (iii) staff know many of the patrons, and many of the patrons know each other;
 - (iv) the gambling room has only 4 gaming machines and can hold only a small number of people; and
 - (v) minors would be noticed quickly anywhere in the hotel.

Will the imposition of the condition minimise the risk of access?

- (i) The imposition of the condition would eliminate any risk of access because the venue operator would be forced to remove the machines in order to maintain the primary access from the carpark.

Is the condition reasonable in all of the circumstances of the venue?

- (j) The condition is unreasonable in the circumstances of the venue. It has undertaken an analysis of the layout of the venues considered in previous Commission appeals. Based upon the information in those decisions, most of the doors in question were either for secondary access or there was alternative access nearby. The Riversdale Hotel can be distinguished from those other venues because the rear entrance is critical as an access point.
- (k) Aside from the cost considerations, it is not practical to create an alternate entrance to the gambling room because the passageway to the toilets is adjacent to a gambling room wall.

Is the condition appropriately imposed for reasons other than risk by minors, such as problem gambling and harm minimisation?

- (l) No issues are apparent in respect to this factor.

Secretary's submissions

- 7. The Secretary submitted, in summary, that the Commission should confirm his decision to add the condition. He specifically submitted that:
 - (a) The possibility of minors gaining access to class 4 gambling at the venue is not minimal as minors can directly access the gaming machine area from the rear carpark door without being seen by bar staff.
 - (b) The proposed virtual entrance does not render minimal the possibility of minors gaining access to class 4 gambling at the venue. Technological solutions are inadequate as staff members are less likely to pay attention to a television screen than a patron that they can physically see, and this risk increases the busier staff get.
 - (c) Imposing the condition will reduce the possibility of access by minors as it would require minors who want to access the gaming machines to enter the main part of the venue before entering the gaming room. This provides opportunities for identification of underage patrons and acts as a deterrent for minors.
 - (d) The condition is reasonable and proportionate. Significant benefits will result from the condition and there is very little, if any, detrimental effect suffered as a result of closing the entrance. The licence condition is fair to the Licence Holder and the community.

Appellant's submissions in reply

8. In reply, the Appellant submitted, in summary, as follows:
- (a) Greater clarity can be gained if it is accepted that the rear door is effectively the main entrance to the hotel. Closing this door would deprive patrons of their primary means of access.
 - (b) The operation of a rural hotel means that bar staff are not confined to the bar service area only, but instead move around. Given the rural location, staff know most patrons, and most patrons know each other.
 - (c) Rather than noticing that someone has entered, the reality is that bar staff notice who has entered.
 - (d) Buzzers are activated at the rear entrance and staff must check to see who it is in case there are any bottle sales.
 - (e) A large HD screen correctly positioned will provide a similar view to someone who could be physically seen. The screen will go from a still view of a door to a moving image of a person entering the venue.
 - (f) While risks of staff not noticing a virtual door might increase in a metropolitan bar as it got busier, the circumstances are different in this rural venue.
 - (g) Installation of a virtual door in a low risk venue would allow testing of a technological solution that improves upon the earlier grainy footage of small CCTV screens.
 - (h) It does not share the Secretary's view that significant benefits would result from the condition and that little, if any, detrimental effect will be suffered. Closing the door would destroy the hotel as a functioning unit.
 - (i) The detriment would be so substantial that imposing a requirement to lock the rear door would result in the gaming machines being removed. No one could lock the main access door at the rear of the building and expect the main business not to be seriously harmed.
 - (j) There have been no problems with access by minors during the lengthy operation of the current setup, so it is difficult to envisage what significant benefit could result from the condition.

Analysis

9. This appeal has arisen because the gaming machines at the Riversdale Hotel are accessible from two entrances; one at the front of the hotel, which requires patrons first to pass through the main bar before accessing the machines, while the other entrance



allows access from the rear of the venue without passing into the main bar area. Because the Secretary is concerned that persons under 18 years of age could use the rear entrance to gain access to the gaming machines, he imposed the challenged licence condition to minimise that possibility. The licence condition requires the rear door to be closed and locked at all times that the gaming machines are in operation.

10. The Commission has considered appeals against the imposition of similar licence conditions on five previous occasions, with decision GC16/06 being the first and most significant of these appeals. In that decision, the Commission set out the key issues to consider in appeals of this nature. They are as follows:
 - (a) In the absence of the condition, are the measures in place sufficient to satisfy the Commission that the possibility of minors gaining access to class 4 gambling at the venue is minimal?
 - (b) Will the imposition of the condition minimise the risk of access?
 - (c) Is the condition reasonable in all of the circumstances of the venue?
 - (d) Is the condition appropriately imposed for reasons other than risk by minors, such as problem gambling and harm minimisation?
11. The Commission's approach is derived from the requirements of the relevant sections of the Act.
12. Pursuant to section 67 of the Act, the Secretary (or the Commission on appeal) must be satisfied that the possibility of minors gaining access to class 4 gambling at the venue is minimal before granting or renewing a class 4 venue licence. Section 67 does not require the Secretary to consider *actual* access by minors to class 4 gambling, rather he must consider the *possibility* of access by minors.
13. The possibility of access must be *minimal*. The Commission has interpreted that to mean "very small or slight", rather than the more restrictive definition of "the least possible in size" (see paragraph 23 of GC16/06).
14. If the Secretary is not satisfied that the possibility is minimal, rather than revoking or not renewing the licence, conditions can be added to *minimise* the possibility of access. The Commission has held "minimise" to mean "to make smaller", rather than "to make as small as possible".

15. In decision GC16/06, the Commission also set out its approach when considering the reasonableness of a licence condition that has been imposed. At paragraph 30, the Commission stated as follows:

The Commission considers that ... it is required, in deciding whether to confirm, vary, or reverse the decision to impose the condition, to consider whether the condition is fair and reasonable in the circumstances. In making its assessment, it takes the following into account:

- (i) Whether the condition is a result of reason rather than a whim or arbitrariness;
- (ii) Whether the condition is proportionate. This involves weighing the benefits gained from imposing the condition compared to the costs and the detrimental effects incurred; and
- (iii) Whether the condition is fair both to the individual faced with the condition and to the community.

In the absence of the condition, is the possibility of minors gaining access to class 4 gambling at the Riversdale Hotel minimal?

16. The Commission considered whether, in the absence of the condition, the possibility of minors gaining access to class 4 gambling at the Riversdale Hotel is minimal (i.e. very small or slight). In the particular circumstances of the venue, the Commission determined that the possibility does not quite reach the standard of being minimal, although the risk is very modest.
17. The Appellant submitted that the possibility is already minimal in the absence of any condition and the Commission found many of the Appellant's arguments to be persuasive; the venue is in a small rural community of fewer than 400 people; the layout of the venue has been the same for 11 years, without incident; staff know many of the patrons, and many of the patrons know each other; and that minors would be noticed quickly anywhere in the Hotel. Further, the Riversdale Hotel has a buzzer which is activated when someone enters the rear door. The buzzer requires staff attention for reasons in addition to monitoring entry into the gaming room because of the location of the bottle store; as the Appellant submitted, once the buzzer is activated "staff must check to see who [has entered] in case there are any bottle sales".
18. The Commission has, in previous decisions, not accepted the adequacy of buzzers as a check on entry by underage patrons. This is principally because once a venue gets busy, it is very easy for staff to ignore the buzzers and continue to serve patrons. However the Commission was of the view that, because the buzzer at the Riversdale Hotel is activated by bar patrons and bottle store patrons, the Riversdale Hotel buzzer was of greater assistance in monitoring for minors than the buzzers at other venues that it has previously considered. In the Commission's view, this connection to the bottle store provides an additional reason for staff to check who has entered. Attention to the buzzer is thus linked with the generation of the business's revenue, whereas, in other

venues, it has been suggested that staff would ignore buzzers in preference to serving patrons who provide the business with revenue.

19. Despite the persuasiveness of the Appellant's arguments, the Commission ultimately decided, on balance, that, in the absence of a condition, the possibility of minors gaining access to class 4 gambling at the venue is not minimal. Bar staff cannot view the rear door from the entire bar service area and the gaming machines are only a very short distance from that door. Minors could, therefore, use that door to access the gaming machines before staff could intervene.
20. The Riversdale Hotel currently has a CCTV system installed, which provides views of the rear entrance and the gaming machine area. However, in common with similar systems installed elsewhere, the Commission considered it to be inadequate for effective monitoring of the type required to prevent access to the gaming machines by minors.
21. The Appellant proposed to install a "virtual door" at the venue to address this inadequacy. However, as the virtual door is not yet installed, it did not change the answer when the Commission asked itself "In the absence of the condition, are the measures in place sufficient to satisfy the Commission that the possibility of minors gaining access to class 4 gambling at the venue is minimal?".
22. The Commission addresses the virtual door proposal later in this decision.

Will the imposition of the licence condition at the venue minimise risk of access?

23. The Commission next considered whether the condition imposed by the Secretary was potentially effective in minimising the possibility of underage access, and concluded that it was.
24. The Commission was of the view that closing the door would reduce the risk of access as it would require minors who wanted to access the gaming machines to enter the main part of the venue before entering the gaming room.
Is the condition reasonable in all of the circumstances of the venue?
25. The Commission next considered whether the imposition of the condition would be reasonable in all of the circumstances of the venue, deciding, on balance, that it would not, as a matter of proportionality and overall fairness.
26. The Commission weighed the benefits to be gained by imposing the condition against the costs and detrimental effects which would be incurred. While the condition was potentially effective in minimising the possibility of access by minors to class 4 gambling

at the Riversdale Hotel, thus providing a benefit, it did not concur with the Secretary's submission that the benefit was significant.

27. For the reasons recorded in paragraph 17 above, the Commission considered that the risk of entry by minors to the gambling area to be relatively low already. As a result, the reduction in risk by imposing the challenged condition would be small.

28. In contrast, it appeared to the Commission that the detrimental effects from imposing the licence condition would be significant and would substantially outweigh the benefit for the reasons set out below.
29. The Riversdale Hotel is located in a very small, rural town. The Appellant's evidence (which was not disputed by the Secretary) was that the rear door is, in effect, the main entrance as most patrons drive to the venue and park in the rear carpark. The importance of the rear entrance is in contrast to secondary entrances which the Commission has considered in earlier cases, many of which were only a few metres from the main entrance.
30. Closing the rear door would require arriving patrons to walk from the carpark, along a side street, around a corner and onto the main road, before entering the entrance at the front of the Hotel, a walk of about 150 metres. The inconvenience to patrons would be even greater on the return journey to the carpark, especially if they were carrying supplies from the bottle store or takeaways from the bar.
31. Patrons with mobility difficulties would be particularly adversely affected by removal of access by the rear entrance, which, in contrast to the front entrance, has been designed to allow easy wheelchair access. Even if the front entrance were modified (at the cost of the venue owner), those patrons would still be faced with the journey described above.
32. Closing the rear entrance would be likely to affect, adversely, the main business of the Hotel and would require the owner to incur the costs of alterations, having regard to matters such as the current location of the toilets and disabled access. In the specific circumstances of this venue, the Commission accepted that the inconvenience to Hotel patrons, and the additional costs, which would arise from a requirement to close the rear door were such that requiring it would result in the business electing to remove the gaming machines instead.
33. In the Commission's view, the likely detriments of the challenged condition would significantly outweigh the modest benefits to be derived from requiring the closure of the rear entrance and would be unfair to the venue owner and the local community.



Is the condition appropriately imposed for reasons other than risk by minors, such as problem gambling and harm prevention?

34. The Secretary submitted that the condition could appropriately be imposed for reasons other than risk of access; namely on harm minimisation and prevention grounds, but he did not seek to rely on these grounds. The Appellant submitted that "no issues are apparent with respect to this factor".
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35. There was nothing before the Commission to suggest that the condition should be imposed for reasons other than the risk of access by minors.

The Virtual Door

36. As noted above, the Appellant proposed to install a virtual door at the venue in an effort to persuade the Secretary not to impose the special licence condition. The Secretary was not persuaded that the virtual door would minimise the possibility of access by minors to class 4 gambling, and imposed the licence condition.
37. In his communications with the Appellant, and in his submissions to the Commission, the Secretary was critical of technology as a means of monitoring potential access by minors to class 4 gambling. Much of this criticism is likely to have been based upon comments made by the Commission itself in earlier appeal decisions, with the Commission recording its concerns about the image quality of CCTV systems deployed at venues under appeal.
38. While the Commission stands by those comments, it does not hold the view that technology can never be satisfactorily deployed to monitor access by minors, in substitution for, or in addition to, a clear view by (human) staff. Technology is used extensively and reliably throughout the gambling industry worldwide and there is no reason why it could not be utilised successfully in the class 4 environment in New Zealand, despite dissatisfaction with some technology deployed in the past.
39. The Appellant's proposal for a virtual door appears to offer a significant improvement over the CCTV systems which it has viewed in the past. Those CCTV screens usually offered a poor, grainy image, often with split or rolling screens, whereas the Appellant's proposal is for a large HD television screen with a dedicated view of the rear door. The Commission's view is that a large, clear and dedicated view of the type proposed could prove to be effective in allowing staff to observe the rear door for access by minors, particularly in conjunction with the buzzer linked to the bottle store. Imposing such a condition would create a benefit which was not disproportionate to the associated detriments.

Conclusion

40. As it has found that the possibility of access by minors to class 4 gambling at the Riversdale Hotel is not minimal, but that the condition imposed by the Secretary is not reasonable, the Commission has decided to vary the licence condition in the venue licence for the Riversdale Hotel, under section 70(2)(b) of the Act, to minimise that possibility. The condition will require the venue to deploy a CCTV system of the type proposed by the Appellant (the "virtual door") together with the existing rear door buzzer, whenever the gaming machines are in operation, as follows:

A large (at least 32 inch) high definition screen depicting only a live, continuous view of the Venue's rear door, together with a buzzer on that door which activates whenever a patron enters, must be deployed and operational at all times that the gaming machines are in operation. The screen must be located in a position which allows the Venue's staff to view it clearly from the service area of the bar.

Decision

41. For the reasons set out above, the Commission confirms the decision of the Secretary to impose a licence condition on the class 4 venue licence for the Riversdale Hotel, but varies that condition, as set out in paragraph 40 above.



Graeme Reeves
Chief Gambling Commissioner
for and on behalf of the Gambling Commission

10th March 2015



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