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LICENSING COMMITTEE

Thursday, 30th April 2015
at 5.30 pm

SUPPLEMENTAL AGENDA

This meeting is open to the public

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AGENDA

Agendas and papers are available via the Council's website

6 GAMBLING ACT 2005 - LARGE CASINO LICENCE: DETERMINATION OF DATE OF CLOSURE OF STAGE 2

(Pages 1 - 14)

Report of the Head of Legal and Democratic Services requesting the Committee consider and resolve whether to alter its decision to extend the closing date of Stage 2 of the casino licensing competition.

ADDITIONAL APPENDICES

Appendix 7 - Aspers Universal Limited ("Aspers") Submission

Appendix 8 – Kymeira Casinos Limited Submission

Appendix 9 – Eversheds for Genting Casinos UK Limited – Letter dated 22 April 2015

Appendix 10 - GGV Letter to Licensing Committee 27 April 2015

27 April 2015

Head of Legal and Democratic Services

ASPERS UNIVERSAL LIMITED (“ASPERS”)

SOUTHAMPTON

LARGE CASINO COMPETITION

SUBMISSIONS
As Requested by
Southampton City Council
Letter of 16 April 2015

HEARING
30 April 2015

Martin S Heslop QC
2 Hare Court
Temple
London EC4Y 7BH

BRIEF SUBMISSIONS

1. We are invited by Southampton City Council Licensing Committee to provide "brief written submissions" in respect of the Committee's Decision on 10 April 2015 to extend the closing date of Stage 2 of the Large Casino Competition to 10th July 2015.
2. This arises in the context of a challenge to that Decision by Global Gaming Ventures (Southampton) Limited, referred to as "GGV".
3. In summary, our submissions on behalf of Aspers are as follows:

Overview

- 3.1 The arguments advanced by GGV in their letters to SCC of 10th and 16th April 2015 are wholly untenable.

The Committee

- 3.2 The Committee was entitled to exercise its discretion to extend the closing date both in law and on the material before it.
- 3.3 It did so after a careful examination of all the issues including specifically that of delay - as the clear and reasoned Decision at paragraphs 28 - 31 demonstrates.
- 3.4 The issue of delay was necessarily inherent in the consideration of the questions before the Committee and was in fact the subject of submissions by all parties including GGV. In these circumstances, the suggestion that it should have featured as a separate agenda topic is fundamentally flawed.
- 3.5 There was no statutory restriction limiting the exercise of the Committee's discretion.
- 3.6 The Committee was not bound by its previous December Decision. In any event, the factual situation before it on 9th April 2015 was very different from that in December and there was clear material to justify a reversal of the Decision.
- 3.7 There is no basis for suggesting that the Committee acted capriciously or unfairly by favouring some applicants over another, as suggested by GGV. It is perfectly clear that the Committee made its decision based upon a correct desire to attempt to achieve a proper competition between applicants for the benefit of the area and the people of Southampton (Decision, paragraph 29) - precisely in line with the principles and spirit of the legislation.

Letter from SCC to GGV dated 15 April 2015

- 3.8 We adopt and support the matters outlined by Martin Grout in his letter to GGV of 15th April 2015. We submit these properly and fairly reflect the true position as opposed to that advanced by GGV.

GGV's Submissions

- 3.9 In particular, we submit the central contention by GGV that delay was not fully considered at the meeting is totally unfounded.
- 3.9.1 The issue was inherent in the questions before the Committee. These could not be answered without considering delay and its impact upon the competition process and all the applicants involved.
- 3.9.2 It was inevitable that the prospect of an extension of time to submit Stage 2 bids was a live matter for argument since no RPWD Applicant (including GGV) could complete bids by the due date of 16th April 2015.
- 3.9.3 In fact, GGV argued against any time delay in both their written and oral submissions - indicating that they were ready to bid now and saw no reason why they should be penalised because other applicants were not ready. In addition, GGV submitted written material from the Watermark Developer, Hammerson, indicating the likely impact of delay on their overall scheme. It is difficult to see the purpose for advancing these arguments or submitting this material if it was not to seek to address a live issue of the possible exercise of the Committee's discretion to allow a later closing date.

Conclusion

- 3.10 In the above circumstances, we submit it is clear the issue of delay was argued before the Committee and the decision reflected a careful analysis of its consequences. There was no unfairness nor could there be any perception of unfairness. The simple fact that GGV does not agree with the Decision provides no proper basis for review or reversal of the fair and reasoned exercise of the Committee's discretion for the benefit of the local community.

Martin S Heslop QC
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22 April 2015

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Martin Grout
Locum Licensing Officer
Licensing – Southampton City Council
PO Box 1767
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22nd April 2015

Dear Martin

Thank you for your letter of 16th April 2015 with its enclosures which we have noted with interest. We have the following brief submissions on behalf of Kymeira Casinos Limited.

First, there can be no reasonable basis to suggest that the hearing on 9th April 2015 was not conducted in a fair and open manner. From the outset the Chair made it clear that any party who wished to speak would be allowed to do so. Those who chose to speak were not limited as to time nor were they restricted on the issues which they chose to address (other than to restrict the ambit of Kymeira's question concerning the precise configuration of the casino on the original platform). Indeed the representative of GGV was given considerable latitude in respect of the wide ranging submissions which he chose to make which went far beyond the provisional agenda items identified by the Council in the agenda papers. In the circumstances it is regrettable that GGV now seek to argue for such a narrow interpretation of the agenda for the purpose of challenging the decision which the committee made on 10th April.

Secondly, the agenda itself was obviously not set in stone and no-one at the hearing sought to argue that it was. Indeed, there was no statutory requirement to hold a hearing and no regulations prescribing the hearing procedure which was entirely a matter for the committee. In any event, the question whether further time might be needed to submit stage two applications was inextricably linked to the written agenda items which included the question whether new applications might be permitted and the extent to which the legislative provisions allowed flexibility to vary the plans and information lodged at stage one for the purposes of submitting a suitable application at stage two. No-one present at the hearing could have been in any doubt that the question of timing was a live and relevant issue.

Thirdly, contrary to the assertion made in GGV's letter to the Council of 16th April (paragraph 4) each of the competing applicants was expressly asked in turn whether the existing time table would allow them to make their stage two applications by the deadline as it was at the time of the hearing or whether they required further time. The reply from three of the four applicants present was that three months from the date of the hearing was required. It is of particular significance that the Chair allowed GGV to make its representations last, having heard the representations of others and the questions which were put to them (and the answers which they gave). GGV's representative chose to make a number of submissions, some of which concerned broad issues which were not on the agenda. He was permitted to do so and no other party to the proceedings objected to him doing so. Notwithstanding the latitude which he was allowed, GGV's representative raised no argument

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Directors: Charles M Flynn, Ernest Battey

KYMEIRA CASINO LIMITED

suggesting that the committee did not have the power to extend the time table for the submission of stage two applications. It was obvious to all that one of the options open to the committee was to extend the time for submitting stage two applications whatever it was to decide on the question of the precise position of the casino or whether new applications might be permitted.

Fourthly, while Kymeira adopted a neutral position on the question whether the casino might be moved within the Royal Pier Development it is conscious of the reasons why others submitted that flexibility should be allowed. It is plainly apparent that the delay in processing stage two applications was occasioned by reliance by some parties on the Council's express advice in its Advice Note of June 2014 which stated:

The council has been asked to clarify the potential conflict between the Regulations that specify the form and content of an application in so far as it relates to being able to provide a detailed plan of the proposed premises.

Applicants will be aware that the Gambling Act (Premises Licence and Provisional Statements) Regulations 2007 states that the application shall be accompanied by a scale plan of the premises and paragraph 4(2) then states that the plan "must" show certain design elements. However, this is then relaxed slightly by paragraph 10(3) which states: "Where the application relates to premises which the applicant expects to be constructed or altered, any reference in paragraphs (2) to (9) of regulation 4 to the premises to which the application relates is to have effect for the purposes of this regulation as a reference to those premises as they are expected to be when constructed or altered".

The council has taken legal advice and is able to state that we will accept Stage 1 Applications that show a red line around the whole of the proposed development and encourage applicants to make this as comprehensive as possible within the constraints this situation creates.

Kymeira chose not to rely on the red line advice (which is why it was neutral on the issue at the hearing of 9th April). But it was apparent from the evidence received at the hearing that others reasonably did so. It was also apparent that discussions which took place between the developer and other operators focused on the perceived flexibility which the Council's advice appeared to provide. That, it seems, would have led to a process which would have required a reconfiguration of the master plan which is why the information which Kymeira would have needed to progress its application on the platform shown on its plan for stage one was not forthcoming.

The inevitable uncertainty which was occasioned by these relatively complex issues has been settled by Committee's ruling of 10th April which noted that there had been "room for legitimate debate as to whether the application site can or should be shown as WQ2, which has occasioned delay". In the circumstances, if the large casino competition is to achieve its purpose of benefiting the area and the people of Southampton, it is not only reasonable but essential to allow an extension to the time table to allow stage two submissions to be presented for the Royal Pier site on the final position and configuration of the casino which must now be identified by the developer in accordance with the master plan for the development as a whole.

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KYMEIRA CASINO LIMITED

In light of the information disseminated by RPW Southampton Limited yesterday, and in particular their timeframe for providing relevant information with regards to the Casino design and location, we will require the full time as proposed by the committee for stage two applications.

In conclusion, Kymeira entirely agrees with the assertions made in the Council's letter to GGV of 15th April 2015. For the additional reasons summarised above, but in particular the timeframe for engagement by RPW Southampton Limited with regards to the site, submits that there is no reason to alter the decision of 10th April concerning the extension of time for submitting stage two applications to 10th July 2015.

Yours sincerely



PP **Ernie Battey**
Director

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Mr Martin Grout
Southampton City Council
Licensing Services
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Date 22 April 2015
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Our ref ROBERDA/051949-010517
Direct dial 0845 497 8146
Direct fax 0845 497 8888
davidnroberts@eversheds.com

By E-Mail Martin.Grout@southampton.gov.uk

Dear Sirs

Southampton Large Casino Competition

As you are aware we act on behalf of Genting Casinos UK Limited in respect of its Large Casino Provisional Statement application and write further to your letter of 16th April 2015.

We are advised by our client that it has nothing further to add in respect of this issue and accordingly, it will not be making any submissions.

We can confirm that our client will not be attending the hearing on Thursday 30th April 2015.

Yours faithfully



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Global Gaming Ventures (Southampton) Limited
11 John Princes Street
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(Registered in England. Registered Number 09055769)

27th April 2015

URGENT – BY EMAIL

Martin Grout Esq
Licensing Officer
Southampton City Council
Civic Centre
Civic Centre Road
Southampton SO14 7LS.

Dear Mr Grout

Casino Competition (the “Competition”): Licensing Committee Meeting 30th April 2015

We are writing to respond to the submissions from Aspers Universal Ltd, Genting Casinos UK Ltd, Grosvenor Casinos Ltd, Kymeira Casino Ltd and RPW Southampton Ltd in relation to the Licensing Committee hearing convened for 30th April 2015.

We do not propose to repeat what we have already said in our letters of 10th April and 16th April and which set out the basis of our concerns. Rather, we want to focus just on the core issues raised in the submissions referred to above.

Proposed delay to Stage 2

1. Several of the submissions and the letter dated 15th April from Mr Grout of SCC assert that the Licensing Committee meeting on 9th April fully considered arguments for and against a possible delay to Stage 2. However this is not accurate.
2. What the Licensing Committee meeting actually considered was whether to exercise discretion to accept one or more late Stage 1 applications. This would in turn have required that Stage 1 be re-opened, and hence delayed Stage 2. One of the strongest objections to late Stage 1 applications was indeed the delay that would result and we are pleased that the Licensing Committee recognised this and declined to exercise any discretion to allow any such new applications.
3. But considering delay as one aspect of whether to accept a late Stage 1 application is quite different from considering a delay to the Stage 2 deadline in isolation.

4. This can most obviously be seen by looking at the arguments in favour of delay. The argument advanced for permitting late Stage 1 applications was that this was a means to allow the RPW applicants to move to different premises (i.e. the WQ2, WQ3 and WQ4 site). Delay would have been an unfortunate side effect of such a decision but not its central purpose.
5. The basis for a decision to delay Stage 2 in isolation is, however, quite different. The possible move of premises has now been dealt with and hence is irrelevant. The only argument in favour of the solo delay is that one scheme has been unable or unwilling to advance to the point at which proper Stage 2 applications can be made and is asking the Committee for the 'oxygen of an extension'. The objections which we have to a delay for this reason are quite different from the objections to a delay which is ancillary to a late Stage 1 application (albeit that there are powerful objections to both).
6. We submit that it is clear that the hearing on 9th April never specifically addressed the possibility of a delay to Stage 2 as a discrete issue. It only considered delay as a negative side effect of re-opening Stage 1 to permit the premises move.

Decision of 9th April

7. In the decision dated 10th April, the Licensing Committee said '*the decisive point for the Committee is that while the delay has been, on any view, regrettable to say the least, responsibility for it does not lie with the applicants*'.
8. However, the applicants are not all in the same position and have different views and different degrees of responsibility.
9. For example, the directors of RPW Southampton Limited (the prospective developer of Royal Pier) and Kymeira Casino Limited (an applicant) are the same people (Mr Charles Flynn and Mr Ernest Battey in both cases). Therefore the proposition that the applicant is not responsible for the failure of the developer to produce information is simply not true in the case of Kymeira. RPW/Kymeira have been aware since at least autumn 2014 of the nature of the information needed for Stage 2 (and indeed GGV later sent them a full list in January 2015, shortly after the December Licensing Committee hearing). The fact that RPW has apparently failed to produce any of the information to any applicant remains entirely unexplained.
10. We also note that it is not simply that RPW have failed to supply all the required information. It seems they have provided absolutely no information, even where this is clearly available (for example, project updates). As GGV said to the Committee in December 2014, it is perfectly possible to submit a Stage 2 proposal that is not fully developed. The Panel and the Licensing Committee would then make an assessment of the benefits arising from such a scheme in light of the published evaluation matrix. It does not automatically follow that a less developed scheme would necessarily lose, although admittedly a hopeless scheme would.
11. The position of the other RPW applicants is extremely varied. Global Gaming Ventures (RP) Limited stated at the 9th April hearing that it was not intending to make a submission on 16th April. Genting Casinos (UK) Limited chose not to attend the hearing on 9th April and has previously suggested in December that the competition should be re-started to allow additional sites to emerge. Grosvenor Casinos Limited said at the

hearing on 9th April that it was unsure as to the commercial viability of a casino at the RP site, that it did not expect to be interested in operating on a basement level and that it was focussing its attention on its Leisure World application.

12. We submit that to conclude that the 'decisive point' in the decision was the lack of applicant responsibility is just not tenable. The five RPW applicants are each in quite different situations. A generalisation is not possible and hence the assortment of differing positions is not a reasonable basis for a 'decisive point'. It is also unclear which, if any, of the RP applicants has made a determined effort to engage with RPW and comply with the revised timetable set down by the Committee on 16th December 2014. None of the RPW applicants has filed any evidence in this regard.
13. Furthermore, we wish to emphasise that the Licensing Committee is judging **applications**, not **applicants**. Applications are made up of a number of different elements (site, scheme, developer quality, deliverability and public benefits, for example) and are to be measured in accordance with the competition's published evaluation matrix. Lack of deliverability or commercial viability or funding or any other uncertainty is a relevant matter for consideration in the Stage 2 process. It is not a reason to delay the Stage 2 process. The purpose of the Competition is precisely to judge these matters.

Fairness

14. The core of GGV's argument, however, is that the law (in the form of the legally binding DCMS Code, General Principle 3.1) requires the Competition to be run fairly.
15. The law does not say that some element of unfairness can be permitted if there is a public benefit. It says simply and clearly that the competition **must** be run fairly.
16. 'Fair is defined by the Oxford English Dictionary as 'treating people equally without favouritism or discrimination'. Aiding a preferred scheme by repeatedly giving it the oxygen of an extension when it can't or won't comply with the published timetable is unfair because it is favouritism. Would such repeated extensions be available to all schemes or only the preferred one? We submit that such extensions would not be available to other schemes.
17. The law (General Principal 3.2.2) also requires that the rules of the Competition are not pre-selected to favour a particular applicant or applicants. Pre-selected means pre-selected before the Competition but it also means pre-selected by way of a change in the rules or procedure during the Competition so as to favour a particular applicant or applicants.
18. The law (General Principal 3.3) also says:
'A licensing authority must ensure that any pre-existing contract, arrangement or other relationship they have with any person does not affect the procedure so as to make it unfair (or appear unfair) to any applicant'

19. We draw your attention particularly to the words '*or appear unfair*'. It is clear that merely the appearance of unfairness is enough to require the Licensing Committee to desist from a particular course. It does not even require actual unfairness.
20. We submit that repeatedly extending the Stage 2 deadline to permit a defaulting class of favoured applicants more time to prepare or improve their submissions against the repeatedly and forcefully expressed objections of another applicant that is ready and willing to proceed in accordance with the Committee's direction, is either obviously unfair or (as an absolute minimum) it obviously *appears* unfair.
21. The Committee considered the timetable in 16th December 2014 and decided that an extension to 16th April was fair. As a pragmatic matter, GGV would accept that given the extra hearing on 9th April 2015 a further two week extension to allow applicants to accommodate the decision made at the second hearing might be unobjectionable. But nothing has changed such as to justify a further three months.
22. In the mix of different issues being considered on 9th April we submit that the Licensing Committee lost sight of the fundamental principle of acting fairly and being seen to act fairly. It felt that it was able to change the rules to permit a further extension because it was acting, it believed, in pursuit of a public benefit and to support a preferred scheme, even though a further extension either was or appeared unfair.
23. This is not a permissible course, however, – fairness and the appearance of fairness, quite properly and correctly, must take precedence over all other considerations.
24. We therefore respectfully request that the Committee reconsiders its decision and sets a new Stage 2 deadline of 5pm on Thursday 14th May 2015.

Yours sincerely

Tony Wollenberg
Chairman