
SOUTHAMPTON CITY COUNCIL
LICENSING COMMITTEE
MINUTES OF THE MEETING HELD ON 30 APRIL 2015

Present: Councillors Tucker (Chair), Galton, Hammond, Painton, Parnell, Vassiliou and Whitbread

23. **APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)**

The Committee noted that apologies had been received from Councillors Lewzey, Pope, Spicer and Lloyd.

It was noted that following receipt of the temporary resignation of Councillor Lloyd from the Committee, the Head of Legal and Democratic Services, acting under delegated powers, had appointed Councillor Hammond to replace her for the purposes of this meeting.

24. **DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS**

Members stated that the interests declared at the meeting of 16 December 2014 (and 9th April 2015) remained unchanged and thus reaffirmed the following and remained in the meeting during the consideration of the matter:

“Councillors Galton, Hammond, Whitbread, Vassiliou, Spicer and Painton declared personal interests, in view of Councillor Galton’s respective status as being a member of Mint Casino (now Genting) and having visited the Genting Casino approximately sixteen months ago and being a member of Grosvenor Leisureworld, Councillor Hammond’s respective status of visiting Gala Bournemouth about five and a half years ago and Grosvenor Brighton about two and a half years ago and a casino in Southend about 10 and a half years ago, Councillor Whitbread’s respective status as holding membership of Grosvenor Leisureworld and visiting in the last eight months, Councillor Vassiliou’s respective status as being a member of Grosvenor Leisureworld and Genting Casino, Councillor Spicer’s respective status as holding membership of Grosvenor Leisureworld and visiting recently and Councillor Painton’s respective status as holding membership of Genting Casino.”

In addition Councillor Tucker declared a personal interest as having attended the recent launch of Watermark Westquay event held by Hammerson

25. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the minutes of the meeting held on 9th April 2015 be approved and signed as a correct record.

26. **EXCLUSION OF THE PRESS AND PUBLIC**

RESOLVED that the parties to the hearing, press and public be excluded at a predetermined point in accordance with Section 100A (4) Local Government Act 1972 whilst the Committee reaches its decision.

27. **GAMBLING ACT 2005 - LARGE CASINO LICENCE: DETERMINATION OF DATE OF CLOSURE OF STAGE 2**

The Committee considered the 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.

Mr Herd (Global Gaming Ventures Ltd), Mr Hagan (Aspers), Mr Walsh (Kymeira), and Mr Clifton (on behalf of the developer, Royal Pier Waterfront) were present and with the consent of the Chair, addressed the meeting.

The Committee considered the decision in confidential session in accordance with the Local Government Act 1972 Section 100A(4).

RESOLVED that the following decision be approved and notified, as agreed at the meeting, to all applicants in writing after the meeting. A brief summary of the decision was read out at the meeting.

DECISION

Introduction

The issue before the Licensing Committee is whether submissions to Stage 2 of the competition should be made by 10th July 2015 as it determined on 9th April, or 14th May as suggested by Global Gaming Ventures (Southampton) Limited (“GGV”) or some other and if so what date. The Committee does not consider itself to be bound by its earlier decision but approaches the matter afresh and with an open mind, and in the light of all the written and oral submissions which it has heard.

Written submissions

The Committee briefly summarises the written submissions as follows.

In GGV’s letter dated 16th April 2015 it submitted that the requirement of fairness takes precedence over all other considerations, and that to grant a further three months to prepare to parties who are not ready to make their submission in accordance with a previously set timetable gives rise to unfairness which is not outweighed by the prospect, actual or imagined, of some future benefit. It submits that the Committee did not ask itself whether its ruling was consistent with the fair conduct of the competition. Other procedural points are made, but of course these are removed from the equation in the light of this fresh hearing. It also reminds the Committee that it is not to permit or appear to permit any pre-existing policy, preference or relationship influence its decision, a matter of which the Committee is very well aware.

Despite GGV’s submission that it would be unfair for an extension to be granted to 10th July, it does not oppose an extension to 5 pm on 14th May. Therefore, its complaint is not about the fact of the extension but its amount.

Grosvenor Casinos Limited (“Grosvenor”) wrote through its solicitors on 20th April 2015, stating its belief that a submission date of 10th July is necessary, taking into account the suggestion by RPW, only very recently advanced in its letter of 31st March 2015, of a basement location for the casino, and the subsequent decision of the Committee on 10th April 2015, as to the permitted footprint of the casino. It considers the submission date of 10th July to be a sensible, pragmatic decision which is likely to bring about the greatest benefit for the people of Southampton. It also submits that the management of the casino timetable is a matter for the Committee, which the Committee takes to mean that the Committee has a wide discretion on the matter, subject only to the requirement of fairness.

RPW Southampton Limited (“RPW”) also wrote through its solicitors, on 21st April 2015. The letter amounts to a detailed account of why it was that some parties at least were

not in a position to submit their Stage 2 bids on 16th April 2015. The Committee does not consider it necessary to set out the contents of the letter, because whether RPW's previous delay was culpable or not, the important point was and is that it does not consider that the applicants are to blame for it.

The letter also complains that at the hearing on 9th April, GGV were permitted to make unfounded remarks regarding viability, which were immaterial to the issues then before the Committee. It will be appreciated that, even though no party sought to prevent GGV from making its remarks, the Committee did not and does not take those remarks into account in exercising its discretion regarding the timetable.

The letter goes on to set out a timetable for steps towards the submission of the Stage 2 bid, culminating in a submission date of 10th July 2015. It states that it is not practicable to compress that timetable any further in the light of the work to be undertaken, to provide applicants with sufficient time to request alterations to the proposals, and for it to give such requests proper consideration.

The Committee would observe that no party challenged the correctness of that timetable.

Aspers Universal Limited ("Aspers") made written submissions by Counsel dated 22nd April 2015 to the effect that there was no procedural unfairness at the hearing of 9th April 2015. As the Committee has observed above, it does not need to go into that submission since any unfairness is cured by the holding of this further hearing.

Aspers generally supports the previous decision of the Committee which, it states, reflected a careful analysis of its consequences. There was no unfairness and 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.

Kymeira Casinos Limited, in a letter dated 30th April 2015, similarly submits that the procedure adopted at the hearing of 9th April was fair, and agrees with the decision which was made. It also submits that it requires the full time allotted by the Committee to make its Stage 2 submission.

Genting Casinos Limited replied through its solicitors to state that it had nothing to add in respect of this issue.

Oral submissions

Attending the Committee were representatives of GGV, Kymeira, RPW and Aspers, all of whom wished to speak.

For GGV Mr. Herd stated that GGV accepts that it is unnecessary to go through what happened on the last occasion since this is a fresh hearing, save to say that last time much time was spent discussing delay in the context of a late Stage 1 application, which would have necessitated delay in Stage 2. He considered that that is different from the question of whether Stage 2 should be delayed in isolation. It should have been on the agenda and debated in that context. It was therefore a surprise to GGV that Stage 2 was extended for 3 months, and it looked as though with no applicant asking for it, it was granted as an ex gratia gift to an applicant which would otherwise struggle.

As Mr. Herd accepted, however, his point is now academic given that this is a fresh hearing.

Mr. Herd referred to paragraph 28 of the previous decision, and the Committee's reference to that being a powerful suite of arguments. It was powerful, he said, because it was based on fairness.

Mr. Herd then referred to paragraph 29 of the decision and said that whether the Committee might take account of the benefits of Royal Pier is an irrelevant matter. It

cannot give a helping hand to one applicant. The legal reason is that the DCMS Code of Practice requires that the process be fair, and that applicants be treated fairly without favour or discrimination. The rules must not be changed to favour a particular scheme. Mr. Herd referred to RPW's letter at page 33 of the Agenda papers, which appears to indicate that the original timetable was set to assist the RPW development. To make further changes to accommodate one applicant verges on being unfair and has the appearance of unfairness.

The Committee would stress that it had no knowledge of whether the original timetable was set to assist the RPW development and is uninfluenced by any such consideration. Mr. Herd said that the Southampton competition rules are based on assessment of merits, and it is not open to the Council to say that the rules should be changed because one scheme is not deliverable. If the situation were reversed, GGV would not be permitted to have an extension if it had not been ready to deliver on the Watermark West Quay site.

The DCMS Code also says that pre-existing relationships must not be permitted to influence or appear to influence decisions, and in this case the proposed extension either is or appears to be unfair. Nothing has changed, he said, to justify a further three months.

He reminded the Committee that GGV wants to develop a good casino.

He stated that on 9th April, the Licensing Committee lost sight of the requirement of fairness. It changed the rules to support a preferred scheme, even though the extension created unfairness.

Mr. Herd reiterated that 14th May should be selected, and this was to accommodate the time for people to prepare and submit their bid, carry out the necessary printing etc. He stated that this was a pragmatic view on GGV's part. But accepting a July deadline means that parties are given the opportunity to improve their application. Mr. Herd stated that the Committee should act based on what is fair and right, and not based on who it thinks ought to win.

The Chairman asked whether Mr. Herd was stating that the Committee might not take into account the potential benefits of the Royal Pier site.

Mr. Herd stated that it is the job of the Committee to prefer the scheme which produces the greatest benefit. But the competition must be conducted fairly, so the assessment of the public benefit can only take place at the end. To make an interim determination of benefit is not fair.

Mr. Herd was asked repeatedly whether the potential benefit of the Royal Pier is a material consideration. He said that the Committee cannot manipulate the process. He said that in setting a fair process, there must be fairness, and taking account of potential benefits must not disturb that central fairness.

Mr. Herd was asked whether there is any reason why the Council could not depart from the previously set timetable. He said that it could be changed because of unavoidable and unforeseen circumstances. He did not explain why only such circumstances were sufficient to justify a change, or indeed how this cohered with GGV's suggested date of 14th May.

Mr. Herd accepted that the Committee is in a position to cure any alleged procedural defects on 9th April and can do so by making a fresh decision so long as it is in accordance with the DCMS Code.

For Aspers Mr. Hagan said that the decision reached was fair and reasoned, and that Aspers does not want to submit a sketchy Stage 2 application. On the previous occasion, GGV had put in a 17 page submission which was largely concerned with questions of fairness and delay, so that this hearing provokes a feeling of déjà vu.

As to fairness, he said that this is about ensuring a competitive tension to the competition. If GGV had sought an extension, it may have been granted one, but that is a hypothetical matter.

Mr. Hagan reiterated that it was no fault of Aspers that it did not have the specific information it needed to make a Stage 2 bid, and that was why a delay was sought. It wanted to comply with the deadline and had a track record of compliance. Aspers has continued to engage with the developer and has every intention and expectation of submitting Stage 2 bid on or before 10th July, but it needs every day of that extension to make the submission. He stated that Grosvenor agrees with Aspers in that submission, and RPW has itself set out all the steps which need to be taken. Aspers' instructions are that there has been engagement that it was not seeing before, and is confident that the developer "got it" and was going to do what it had to do, and that this was an ultimate deadline which it had to work with Aspers to meet.

What would be unfair, according to Mr. Hagan, would be for the Committee to reverse or alter its previous decision with no change of circumstances since the 9th April meeting. There is no proper basis for review or reversal of that decision.

The only unfairness to GGV of an extension would be that GGV would have competition which it would otherwise avoid.

For Kymeira, Mr. Walsh QC said he adopted what Mr. Hagan said. The sole reason the Committee is here again is that GGV says that the issue of delay of Stage 2 was not on agenda and was not discussed. Mr. Walsh said that it was to all present perfectly obvious that the question of delay was to be discussed, that all parties were given free rein to say what they wanted to say and GGV went last having heard what everyone else had to say. The issue of delay was exhaustively considered. The benefit of the decision that the Stage 2 casino position had to be on all fours with the Stage 1 position was that it clarified the matter, and was robust, but was balanced by the need to get a full and detailed Stage 2 application before the Committee. The notion that Stage 2 bids could be sketchy and then supplemented later is not a proper way to proceed.

Mr. Walsh said that there are components to the fairness issue other than whether any party will be disadvantaged. Fairness involves striking a balance. It is inevitable in striking a balance that not everyone is happy. Some will gain and some will lose. And one has to find the fairest position. The fact that someone may be disadvantaged does not mean that it is unfair unless it is out of kilter. Nor has the Committee to put out of its mind the potential benefits of the Royal Pier site or the fact that five applicants want to participate in a development there. The fact that a decision might exclude five applicants is a relevant consideration, although its weight is a matter for the Committee.

Mr. Clifton for RPW reiterated that there had been a previous legal uncertainty regarding where the red line could appropriately be drawn, and the question was not finally resolved until 9th April. He considered that the decision reached in relation to an extension of Stage 2 was and is fair. The timetable in RPW's letter had been properly considered, and was submitted in time for other parties to comment on it as appropriate. The previous decision provided the certainty RPW needed, and RPW would ensure that the deadline is adhered to. But to bring any of the dates in the letter forward would not be possible given the process of drawing up the masterplan with the knock-on consequences for other stages in the process.

Mr. Herd was given an opportunity to reply to the submissions of other parties. He reminded the Committee that an extension was originally granted in September 2014, so there is a history of repeated applications for extension. He stated that the core issue was whether a disbenefit to one applicant is unfair. He accepted that a disbenefit is not necessarily unfair. The question is whether the decision is motivated by favouritism or discrimination or its appearance. If a decision looks like it has been made

out of favouritism or discrimination, it is unfair. The pattern of extensions here, taken in the round, looks unfair.

Conclusion

The Committee is grateful to all the parties for their submissions, whether written or oral.

It wishes to reiterate that it comes to this issue independently and objectively and without reference to any view it may have about the merits of the Royal Pier development. It has also come to the decision afresh.

The Committee agrees with GGV that it must arrive at a fair determination, holding the balance between all applicants. GGV has accepted that the potential benefits of certain applications are a material consideration. It does however say that this should not be allowed to disturb the inherent fairness of the process. The Committee considers that that is a submission which goes to the weight of the consideration and not its relevance. The Committee does not come to the decision in a vacuum, and considers itself able to recall the essential point of the competition, to realise benefits for the people of Southampton. However, it agrees that it must hold a fair balance between all the applicants.

Contrary to GGV's submissions the Committee has not made an assessment of the benefits of the Royal Pier site. As it has previously stated, it is not prepared to choke off any potential benefits by refusing a sufficient extension of the Stage 2 deadline. The case for an extension would not be stronger or weaker if the Royal Pier scheme were a good or bad one. The question is simply whether the Royal Pier applicants should be given an extension in the light of their submission that they need an extension to enable them to submit a competent Stage 2 bid.

The Committee takes as its guiding principle the Code of Practice, which makes it clear that the procedure has to be fair, and that any pre-existing contract, arrangement or other relationship the Council may have with any person does not affect the procedure so as to make it unfair, or appear unfair, to any applicant. The Committee again reiterates that it is not influenced in any way by the merits of the Royal Pier scheme, or any pre-existing contract, arrangement or relationship with any person. It is simply concerned to achieve fairness to all parties, five of whom have made applications for the Royal Pier site, having regard to the fact that the purpose of the competition is to maximise the benefits to the people of Southampton. It is inherent in any balancing exercise that one party may be disadvantaged: this does not make it unfair. In this respect it agrees with the submissions of Mr. Walsh, a proposition with which Mr. Herd did not disagree.

GGV submit that paragraph 28 of the Committee's previous decision contain weighty considerations, including that a further delay will enable rival parties to improve their bids. The Committee agrees. However, the Committee, considering the matter afresh, remains of the view that the counter-arguments set out in paragraph 29 are also weighty, for the reasons there given. It cannot be the case that the Committee must ignore the potential deficit to Southampton by cutting off five applicants from participating properly in the competition, and in the final resort it does not seem that Mr. Herd was going so far as to say that it must do so.

As to the contents of paragraph 30 of the previous decision, there is no evidence, reason or basis for the Committee to alter its previous view that responsibility for the delay does not lie with the applicants. Nor does it consider realistic GGV's suggestion that applicants should put in sketchy Stage 2 bids, which would not benefit the Council in its determination process or, by extension, the people of Southampton. The fact that

the applicants are not culpable for the delay is, in the estimation of the Committee, a powerful consideration.

Further, the Committee accepts that RPW is now co-operating with the process and that there is a real will to meet a deadline of 10th July. It accepts that proper bids will not be submitted if the date is pulled back to an earlier date.

The Committee can understand why GGV does not wish there to be a long extension, but does not consider it fair to shut out five of the applicants. In reference to Mr. Herd's final submissions, it does not consider that there is any element of favouritism or discrimination, by reason of the history or otherwise. It is simply to accede to the need of five parties for an extension to enable them to stay in the competition, which is designed to benefit the people of Southampton. Nor, in the view of the Committee is there any appearance of favouritism or discrimination: the objective observer, knowing of the factors taken into account by the Committee, would conclude that the Committee had done what it has done – to try to find a fair balance between the need of all parties, rather than excluding five out of seven applications by default.

For those reasons, the Committee, while coming to this matter afresh, reaches the same view that it reached on the previous occasion. It is a question of balance, trying to do justice to all applicants. It is not a perfect science but a balancing exercise, which the Committee has anxiously attempted to perform.

There is a further consideration, which serves to supplement and not alter the conclusion just reached. GGV does not oppose any extension. It accepts that there can be an extension. However it wishes the extension to be only to 14th May. The Committee does not criticise GGV for conceding the principle: rather it commends it. However, once that principle is conceded, the question of the extended date must be a matter for the Committee. The reason for the extension sought is to enable proper bids to be submitted. Following that logic, the Committee has selected the extended date to enable a proper application to be submitted by the applicants. The fact that this may benefit those applicants does not make it unfair: rather it is the reason for the extension. Any decision it makes in an attempt to hold the balance is likely to benefit or disbenefit at least one party to some extent. In this case, in its attempt to be fair to those seeking a longer extension than GGV concedes should be granted, the Committee does not consider that it is being unfair to GGV. Rather, it has tried to find a fair balance.

It would also observe that, in the same way that the Royal Pier applicants will have the opportunity to improve their bids, so GGV will have the opportunity to improve its bid in the course of the coming months. It realises of course that GGV was already ready to submit in April, but there is still likely to be some degree of benefit in being able to review and improve the content of the bid.

In summary, it is inherent in this exercise that any delay sought by one party and opposed by the other is likely to benefit one party and potentially disadvantage another. So if disadvantage were to be equated with unfairness no extension could ever be granted. Rather, the requirement of fairness is that the Committee must hold a reasonable balance between the need of all parties. It considers that it has done so. Therefore, the Committee has determined that the deadline for submission of bids at Stage 2 shall be noon on 10th July 2015, and strongly reiterates that a further extension application is highly unlikely to be viewed with sympathy.