

Pram Nayak
RPW (Southampton) Limited

By email

23 January 2015

Dear Pram

Royal Pier Waterfront Development Southampton: Large Casino Competition

The following represents a solution to the progress of Stage Two applications for Provisional Statements by all applicants applying for the same in respect of the Royal Pier Waterfront Development ("RPWD"), Southampton and also serves to more clearly explain the Council's Advice Statement dated 20.06.14.

1. The large casino licence application process allows for either:
 - (a) application for a Provisional Statement or
 - (b) application for a Premises Licence.

2. There are fundamental differences between the two different types of application (stemming from the original intention on the part of those drafting the legislation that premises-related licensing applications under the Gambling Act 2005 ("GA2005") for premises yet to be constructed or altered should be by way of application for a Provisional Statement rather than by way of a Premises Licence).
 - (a) a Premises Licence application is "fixed" in the sense that it cannot be relocated otherwise than by way of a wholly new Premises Licence application (save solely for converted casino licences, ie those previously licensed under the Gaming Act 1968 - see section 187(2) GA2005 and paragraph 65(12) of Schedule 4 to the Gambling Act 2005 (Commencement No 6 and Transitional Provisions) Order 2006 - where a variation application can be made to enable relocation of such a casino within the same local authority area). Such a relocation option is not open to large casinos under GA2005
 - (b) instead the "flexibility" at the stage of application for a Premises Licence to depart from plans that were submitted in support of the Provisional Statement application is contained within section 205 GA2005 - see paragraph 524 of the Government's Explanatory Notes to GA2005 at <http://www.legislation.gov.uk/ukpga/2005/19/notes/division/5/3/10/24> - as long as it is still the case that the application for a Premises Licence is made in reliance on the Provisional Statement.

3. Consistent with the above, the statutory requirement for an application for a Provisional Statement under GA2005 is that application is made for premises that the applicant "expects" to be constructed or altered or that it "expects" to have a right to occupy; in this respect the plans accompanying such an application will be indicative only.

4. The statutory requirement for the plan to accompany such an application is that it, amongst other things, shows "the extent or boundary of the premises as they are expected to be"; this was done by all applicants for the RPWD

5. The prescribed application form for a Provisional Statement requires (at Q11) an

applicant to state the address of the premises (or, if none, to give a description of the proposed premises and their location) as the same are expected to be (ie at the time of the application). This was done by all applicants (albeit in different ways). It is worthy of note that the prescribed application form for Stage Two similarly reflects that circumstances may change in that (at Q14) it asks applicants to confirm whether the plan accompanying the application is "*illustrative only*"

6. The Council sought to assist applicants in its Advice Statement dated 20.06.14, in which it effectively stated that it accepted that the precise location of the proposed casino may change but this would be acceptable as long as such relocation was within the overall RPWD site. The council suggested that the said site might be shown by means of a red line on a site plan. Some applicants showed a red line on their site plan (and did so in different ways) and some did not, but nevertheless submitted a plan that clearly showed the extent of the RPWD site. It is important to note that:

(a) the requirement for such a red line was not a statutory requirement - unlike the requirement for a plan showing the "*extent or boundary of the premises as they are expected to be*" and

(b) the red line could not in any event be construed as constituting the said statutory requirement because a line indicating the boundary of the RPWD site could under no circumstances be regarded as showing the "*extent or boundary of the (casino) premises as they are expected to be*"

Instead the red line suggestion - and it was nothing more than that - was a means of assisting applicants to identify the RPWD site for the stated reason (by the Council) that "*clearly it will be difficult to commit an application to a specific location on an area that is part of the sea and where final plans may not have been fully developed*" - see email from Martin Grout to all potential applicants dated 20.06.14

7. It follows that the red line did not (and could not) supersede or replace the statutory requirement for a line on a plan showing "*the extent or boundary of the premises as they are expected to be*" and that accordingly whether or not an applicant did show a red line on an accompanying site plan should be ignored if the site plan submitted nevertheless does adequately show the whole of the RPWD site - as was the case with all RPWD applicants. If one was to regard the applications by all such applicants as restricted to (a) the precise locations specified in their answers to Q11 and/or (b) within the boundary of the red line (if any) shown on their site plans, it could be argued that none of the applicants would be permitted to apply in due course for a Premises Licence otherwise than in the precise position shown on the plans accompanying their Provisional Statement application

8. Such an argument would be inconsistent with the "mechanism" applicable to Provisional Statement applications (and Premises Licence applications made in reliance on Provisional Statements) because the use of the word "expects" in section 204(1) GA2005 ie:

(1) *A person may make an application for a provisional statement in respect of premises:*

(a) *that he expects to be constructed,*

(b) *that he expects to be altered, or*

(c) *that he expects to acquire a right to occupy,*

clearly anticipates that change will occur between the plans at the time of the application for the Provisional Statement and subsequently. This said, quite plainly there could come a stage when it could be said that a change is so fundamental that a consequential application for a Premises Licence could not be said still to be in reliance on the Provisional Statement.

9. In its Advice Statement dated 20.06.14 the council has clarified what it would regard as the geographical extent to which a Premises Licence application could be regarded as being made in reliance on a Provisional Statement, namely the boundary of the RPWD site. Furthermore, it is important to remember that changes in the precise shape and/or location of the premises (which may be said to impact upon interested parties) can, and must, be fully aired and addressed at a hearing for a Premises Licence under section 159 GA2005 without the restrictions imposed by section 205, because the premises will *"have been constructed otherwise than in accordance with the plans and information included in the application for the provisional statement"* - see section 205(4) GA2005.

10. For the reason stated in point 7 above, whether or not an applicant showed a red line and, if it did, where it placed that red line, should be ignored. It is within the discretion of the Council to determine that it will do so. It would not be within their discretion to do so if the red line was a statutory requirement, which it was not. No prejudice will be suffered by any of the RPWD applicants if it so determines.

Yours sincerely

A handwritten signature in black ink, appearing to be 'David Clifton', written over a horizontal line.

David Clifton