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26 February 2015

Dear Mr. Nayak,

Royal Pier Waterfront Development Southampton: Large Casino Competition

I am writing to set out the Council's views upon the letter from Clifton Davies to you dated 23rd January 2015, upon which we have consulted Leading Counsel. The purpose of that letter, we believe, is to justify a suggestion that at Stage 2 of the casino licensing process, any of the applicants could show the casino on one or more of the plots marked WQ2, WQ3 or WQ4 to the north of Mayflower Park and to the south west of the roundabout and/or that a premises licence application could be made for one of those plots in reliance on the provisional statement.

The applications

Before turning to a legal analysis of this suggestion, it is necessary to place the proposal in the context of what applications were made at Stage 1, and therefore what the substance was of the provisional decision to grant provisional statements in each case.

- Aspers:
  - The description of the premises was as follows: "The casino will be located within the Casino Location Zone at the Royal Pier Waterfront Development. The casino building will be a multi-use building of four or more levels. The casino will be located on the ground floor along with shops, bars and restaurants. The upper levels will be a car park."
  - The plan showed the Casino Location Zone as a blue area at the southern tip of the reclaimed land. The annotation of that area was "Casino Location Zone/Boundary of Premises (Provisional Statement)". Within that area was a smaller hatched area carrying the legend "Proposed Demise (Provisional Statement)". There was a red line around an area which includes plots WQ2, WQ3 and WQ4. However, this was titled "Royal Pier Waterfront Development."
  - Plots WQ2, WQ3 and WQ4 are therefore outside the application site.

- Genting:
    - The description of the premises was as follows: “Casino premises to be known as Genting Casino and to be constructed on plot of land to be reclaimed from the River Test (and expected to be situated at building identified as Building RP2.1), Royal Pier Waterfront, Mayflower Park, Southampton (and as more particularly shown on the site plan accompanying this application.)”
    - The plan showed an irregular T-shaped area bounded by a red line with the legend “Extent of the boundary or perimeter of the premises” which included plots WQ2, WQ3 and WQ4. There was also a smaller blue-lined area at the southern tip of the reclaimed land with the legend “Expected boundary or perimeter of the casino”, and the words written inside the area “Proposed casino.”
    - While the Council considers the position to be ambiguous, there is at least room for an argument that the position of the casino was not fixed by the blue line, but was moveable within the red line which showed “the extent of the boundary or perimeter of the premises.” A member of the public reading those documents might reasonably anticipate that the casino was moveable within the red line. Therefore, subject to any contrary argument, the Council would be minded to accept that the application site was sufficiently wide to accommodate Plots WQ2, WQ3 and WQ4.

- GGV:
    - The description was “To be located on existing and reclaimed land situated to the south of Town Quay and to the east of Mayflower Park and known as the Royal Pier Waterfront, Southampton.”
    - The plan showed a red line consonant with that description, and not including Plots WQ2, WQ3 and WQ4.
    - The plots are clearly not within the application site.

- Grosvenor:
    - The description was “On land to be reclaimed at Royal Pier, provisionally described as Building RPW Casino, Royal Pier Waterfront, Mayflower Park, Southampton.”
    - The plan showed a small area outlined in blue at the southern tip of the site with the legend “Proposed Casino Location, Shown in Blue (Multi-Storey Car Park over).”
    - The plots are clearly not within the application site.

- Kymeira:
    - The description was “Proposed Royal Pier development on a site bounded by Town Quay (road), Town Quay (pier) to the east, Mayflower Park to the west and the River Test.”
    - The plan showed a small area outlined in blue at the southern tip of the site with the legend “Proposed Casino Location, Shown in Blue (Multi-Storey Car Park over).”
    - The plots are clearly not within the application site.

As can be seen, therefore, in only one case – Genting - are the plots even arguably within the application site.

The Clifton Davies letter

We can now turn to the letter from Clifton Davies.
We hope we summarise the essential arguments fairly and accurately, if concisely, as follows:

- Provisional statements give more flexibility than premises licences in terms of the casino ultimately to be built, provided that the application for the premises licence is made in reliance on the provisional statement.
- The statutory requirement for provisional statement applications is that the application is for premises which the applicant expects to construct, so that plans are indicative only.
- Any red line shown on application plans (whether as a result of the Council's advice note of 20th June 2014 or not) was not pursuant to a statutory requirement and so could not trammel the flexibility afforded to applicants at the stage of applying for a premises licence in reliance on the provisional statement.

We believe that it is being said that it would be open to the winner of the competition to submit a premises licence application for plots WQ2, WQ3 and/or WQ4. It is not being stated expressly, but we believe it is implied, that the Council would be bound to assess an application at Stage 2 on that basis.

The Council has given anxious consideration to this question. It also accepts that the views expressed in this letter are given without having heard the licence applicants, some or all of whom may wish to make submissions to the licensing authority on the matter one way or the other, so clearly nothing stated herein binds the licensing authority. Nevertheless, it has been thought helpful and fair, since the matter has been raised by you as the site developer, to express a view on the matter at this juncture, subject to any further argument, particularly as applicants will be in the process of preparing their Stage 2 bids.

We do not believe that it is open to the Council to proceed to the end of the competition and then to accept as valid a premises licence application for a different site to that judged and exposed to public consultation at Stage 1 of the process. For much the same reason, it is not open to the Council at Stage 2 of the competition, behind closed doors and without any public consultation to assess a proposal on the basis that the eventual site will be outside that shown at Stage 1.

The essential questions

The essential questions arising can be formulated thus:

- Can application plans be amended at Stage 2 so that the casino is outside the application site shown at Stage 1?
- Can the Advisory Panel assess a scheme which is materially different from that the subject of a Stage 1 grant, on the grounds that, should a provisional statement be granted on the basis of the Stage 1 plans, the ensuing premises licence application will be made on the basis of the amended scheme?

The statutory framework

The arrangements for the casino licensing competition operate as a "second stage" to the normal premises licensing process under the Gambling Act 2005. It is therefore appropriate to set out the provisions for premises licence applications first of all, and then turn to the provisions unique to casino premises licences.

Section 37(1)(a) of the Gambling Act 2005 makes it an offence to operate a casino while section 37(2) provides an exception if the operation is pursuant to a premises licence.

The arrangements for premises licensing are set out in Part 8 of the Act, and are administered by local licensing authorities, which are the local authorities for the area in question. Section 150(1)(a) makes provision for a casino premises licence.

Section 151 states the requirements of a premises licence. It must, among other things, “specify the premises to which it relates.” Section 353 states that “premises” includes any place. It is trite law that premises are places defined by metes and bounds, that is to say any area which is capable of delineation on a plan. In certain cases, which do not arise here, an issue arises of whether something is genuinely a premises even when the perimeter is artificial, e.g. where a single betting office is split into two separate areas so as to try to double up the statutory entitlement to gaming machines. However, it is always accepted that the minimum requirement for premises is that it is defined on a plan.

This is in turn confirmed by the statutory arrangements for the premises licence plan. Section 151(1(g) states that the premises licence must include a plan of the premises. Section 151(2) entitles the Secretary of State to make regulations about the form of the premises licence. The Secretary of State took the opportunity to do so, through the medium of the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007 (SI 2007/459) (“the Regulations”). Regulation 21 states that the plan must comply with the requirements of regulation 4(2)-(9). Regulation 4(2), in turn, requires the plan to show the extent of the boundary or perimeter of the premises, together with certain other matters which amount to precise locational co-ordinates. Thus, the premises licence process may be seen as one which culminates in a definition of the boundary or perimeter of the premises to which the licence relates.

Indeed, once the licence is granted, section 187(2) of the Act prevents a variation application whose effect is that the licence would relate to premises to which it did not previously relate. Parliament clearly thought about that carefully, because a limited dispensation is given to casinos which were previously licensed under the Gaming Act 1968: Schedule 4 paragraph 65(12), Gambling Act 205 (Commencement No. 6 and Transitional Provisions) Order 2006. For all other premises, the premises, once fixed, cannot be varied: a new premises licence application is necessary.

Therefore, it can be concluded that the purpose of the premises licensing system is to fix the ambit of the premises through the licensing process.

With this in mind, it is possible to turn to the application process for premises licences.

Section 159 permits a person to apply for a premises licence authorising the use of premises for a licensable activity. The word “premises” plainly means the same as it does in other parts of the legislation – i.e. a defined space.

There are two important formal prerequisites. First (subject to exceptions which do not apply here), an application may only be made by a person who holds an operating licence from the Gambling Commission authorising him to carry on the activity in question, or who has applied for such a licence: section 159(2). In the latter case, the application shall not be determined until the operating licence has been issued: section 163(2). Second, the application may only be made by a person who has a right to occupy the premises to which the application relates: section 159(5). The relevance of this will become apparent below.

The application must be made in the prescribed form and manner and contain or be accompanied by the prescribed information or documents: section 159(6). The requirements are set out in the Regulations. The Regulations set out requirements for the application plan, which are the same requirements as those relating to the licence plan, and are governed by Regulation 4. Once again, it is necessary to show the extent of the boundary or perimeter of the premises.

The application having been made, it must then be advertised (section 160) following which there is provision for representations by “interested parties” or “responsible authorities” (section 161) who are defined by sections 158 and 159 respectively. Essentially the former are local residents and businesses and the latter statutory authorities. In the normal course of events, a representation leads to a public hearing (section 162), so that the process works transparently, democratically and accountably.

Whether or not there is a hearing, the test for the grant or refusal of a premises licence is that set out in section 153, which (to paraphrase), requires the authority to aim to permit the application in so far as the application is compliant with any code of practice or guidance issued by the Gambling Commission, the licensing objectives and the licensing authority’s licensing policy.

The test is regulatory in nature. The aim is that those applications which are compliant in a regulatory sense should be permitted. This is in contrast to the previous system for casinos under the Gaming Act 1968 (Schedule 2) under which the question of whether there was a substantial unmet demand for the proposal was an important criterion. This was swept away by the Gambling Act 2005, which goes further by expressly making irrelevant the expected demand for the facility. Thus, the previous notion, under which gambling was tolerated provided that there was demand for it was replaced by a system under which gambling is encouraged provided that it is compliant. The purpose of the system, in general, is to regulate gambling and not to suppress or limit it.

Section 204 allows a person, rather than applying for a premises licence, to apply for a provisional statement in respect of premises that he expects to be constructed or altered or which he expects to acquire a right to occupy. Section 204(4) expressly disapplies certain earlier provisions so that it is not necessary for the applicant for a provisional statement to have a right to occupy or to hold or even have applied for an operating licence. However, importantly, the requirements as to plans in relation to provisional statements, both at the stage of application and grant, are precisely the same as those for premises licences: regulation 10(2), (3); 15(1), (2).

Where a provisional statement has been granted, then section 205 applies where a premises licence application is made “for a premises licence in respect of the premises”: section 205(1). This again obviously means the premises shown the provisional statement application plan and the plan attached to the provisional statement itself. Where the section applies then representations must be disregarded unless they address matters which could not have been addressed at the provisional statement application stage or reflect a change in the applicant’s circumstances (section 205(2)) and the application may be refused, or additional conditions imposed, only by reference to matters which could not have been addressed before or which reflect a change in the applicant’s circumstances (section 205(3)). However, that immunity from representations and regulatory interference is lost if the premises have been constructed or altered otherwise than in accordance with the plans: section 205(4).

The effect, therefore, is to grant immunity from representations and regulatory interference in respect of the later, premises licence application, stage but only where the premises have been developed in accordance with the provisional statement plans. This is consistent with the notion that the boundary and perimeter of the premises, once defined in the application plan, are fixed. Of course, an applicant may make a premises licence application using plans which are different from those shown in a provisional statement, but if he does so then he gains no immunity from representation and is in the same position as any other applicant.

That, therefore, is how the system of premises licensing now operates in England, Scotland and Wales, in general.

A special procedure for casinos

However, following political, public and press disquiet as to the impact of unlimited casino gambling (or at least casino gambling that was limited by market forces rather than by law), the Government of the day amended the Gambling Bill so as to provide for numerical limitation of casinos.

The outcome of that process is seen in section 175 of the Gambling Act which provides that no more than one regional, eight large and eight small casinos may have effect at any one time. In the event, secondary legislation in relation to the regional casino was not passed. However, the secondary legislation in relation to the eight large and eight small casinos was passed, under which Southampton City Council is permitted to grant one large casino: see Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order 2008 (SI 2008/1327). The expression large casino is itself defined in the Categories of Casino Regulations 2008 (SI 2008/1330).

Section 175(5) states that an application for a casino premises licence may not be made to a licensing authority if the previous provisions as to numerical limits would prevent the authority from granting the application. So, in practice, if there is a 2005 Act casino premises licence in force, no new application may be made.

Section 176(6) states in similar vein that no application for a provisional statement may be made if it relates to a casino and the foregoing provisions would prevent the authority from granting a premises licence in response to an application made “in reliance on the provisional statement.” It will be necessary to refer back to this provision later. Suffice to say for the present that the expression obviously means “for the same premises.” If it did not, the expression would be meaningless. Section 175 is obviously preventing a premises licence application when the authority is prevented by the numerical limits from granting it, and by the same token is preventing a provisional statement application when any consequential premises licence application would be similarly prevented.

Section 175(7) then goes on to state that Schedule 9, which makes provision for treatment of casino premises licence and provisional statement applications, shall have effect. It is, therefore, necessary to turn to Schedule 9.

Schedule 9 paragraph 2 requires an authority to comply with regulations about inviting competing applications for casino premises licences. The regulations are the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 (SI 2008/469) and were complied with in this case. Regulation 6 states that the licensing authority’s application pack must include a statement that an application must be made in the form and manner prescribed by the 2007 Regulations. This makes clear that there is no distinction in the form of an application between a casino premises licence application and any other application: in all cases it is necessary to supply a plan showing the boundary and perimeter of the premises, whether the application is for a casino or a betting office licence, or whether the application is for a premises licence or a provisional statement.

Schedule 9 paragraph 4 states that the licensing authority must first consider in respect of each application whether they would grant it if section 175 did not apply. That is to say, the principles involved are precisely the same as those for any other premises licence application. This is what is commonly known as “Stage 1”, or “the regulatory stage.” The importance of this stage is that responsible authorities and members of the public are given the opportunity to make

representations upon the proposals, including any representations as to the location of the casino – no such opportunity is afforded them at Stage 2, which takes place in private.

Schedule 9 paragraph 4(2) also makes it clear that at this stage (because it is a regulatory test) the authority must not take into account the relative merits of the applications. However, again importantly, all the competing applicants are treated as interested parties and so may make representations on their rivals' applications.

If at the end of Stage 1, there is only one successful applicant, then they are to receive a premises licence or a provisional statement in the ordinary way. If, however, there is more than one successful applicant, then of course they do not each receive a grant. Instead, Schedule 9 paragraph 4(2) states that the successful applicants receive "a provisional decision to grant an application subject to the provisions of paragraph5 below." In other words, they receive the right to enter Stage 2 of the competition.

Schedule 9 paragraph 8 provides that an appeal may be made to the magistrates' court against a Stage 1 determination. Stage 2 of the competition may not be commenced until the time for appealing has expired or, if appeals have been brought, they have been disposed of. The appeal is to the magistrates' court under section 206, with a further appeal as of right to the High Court on a point of law under section 209.

Stage 2 operates as a competition. The purpose of the Stage 2 competition is for the authority to determine "which of those applications to grant": paragraph 5(2). For that purpose, they are to determine "which of the competing applications would, in the authority's opinion, be likely if granted to result in the greatest benefit to the authority's area": paragraph 5(3).

Having conducted that assessment, the authority are to grant "that application": paragraph 5(4).

It is clear from that language that there is intended to be no variance between the premises at Stage 1 and the premises at Stage 2. Stage 1 is concerned with the regulatory compliance of the application and Stage 2 with the benefits of the application. The Act has in mind the same application, with the same boundary and perimeter.

Schedule 9 paragraph 6 of the Act states that the Secretary of State may issue a Code of Practice about the procedure to be followed in making determinations at Stage 2 and matters to which the licensing authority should have regard, and further states that the licensing authority must comply with the code of practice. The Secretary of State published a code of practice on 26th February 2008. Section 4 of the Code makes it clear that Stage 1 of the competition is to be run on conventional gambling licensing principles, with the variations set out above. Paragraphs 5.4.5 and 5.4.6 of the Code contain provisions as to confidentiality, the combined effect of which is that, while an applicant is a competing applicant in relation to the Stage 1 plans and can make representations upon them, an applicant is not able to see what benefits are offered to an authority at Stage 2.

As stated above, the licensing authority must grant the licence to the applicant whose application would, in the authority's opinion, be likely if granted to result in the greatest benefit to the area of the authority: Schedule 9 paragraph5(3)(a). What is granted is, of course, "the application", which means a licence or provisional statement relating to the premises shown in the application plan.

It is right to say, however, that the benefits may arise from matters which are "on-site" or "off-site" or which relate to no site at all. So, for example, benefits may be a financial contribution to a gambling addiction facility, either outright or as a percentage of the profits of the operation. They may involve the contribution to regeneration or employment occasioned by the casino itself or by a

different building altogether which the applicant contracts to provide. The benefits may be secured by an agreement, commonly known as a Schedule 9 agreement, provided for by Schedule 9 paragraph 5(3)(b) and further locked in by a licence condition to give effect to that agreement: Schedule 9 paragraph 5(3)(c).

Where what has been applied for is a premises licence, then if that applicant wins the competition he is awarded a premises licence. If he has applied for a provisional statement, he is awarded a provisional statement.

Unlike at Stage 1, there is no appeal against a decision at Stage 2: Schedule 9 paragraph 8(4).

Where what is granted is a provisional statement then, of course, a premises licence application is to follow. Provision is made for this by Schedule 9.

Schedule 9 paragraph 9 states that:

> "A reference in this Schedule to an application for a casino premises licence includes a reference to an application for a provisional statement where this Schedule would apply to an application for a premises licence made in reliance upon the provisional statement."

There is some circularity about that provision, but essentially it is saying that to the extent that the Schedule applies to premises licences, it also applies to provisional statements. In other words, there is no distinction between their treatment. The language of reliance echoes that in section 175(6).

Schedule 9 paragraph 10 then provides:

> (1) This paragraph applies where the process described in paragraphs 3 to 5 results in the issue of a provisional statement.
> (2) Paragraphs 2 to 5 shall not apply by reason only of the fact that an application for a casino premises licence is made:
> (a) in reliance on the provisional statement;
> (b) while it has effect.
> (3) The licensing authority may provide in the provisional statement for it to cease to have effect at the end of a specified period.

What, essentially, is contemplated that is that the authority may limit the period of effectiveness of a provisional statement. Provided that an application for a premises licence is made in reliance upon the provisional statement and during its shelf life, then the casino licence competition does not need to be re-started.

That, it seems, is because all relevant questions have already been asked and answered: the regulatory compliance of the application has been judged sound. Further, the benefits likely to be brought forth by that application have been adjudged the greatest of all the competitors.
The entire construct of Schedule 9 is that the competition proceeds to its conclusion based on the scheme described in the application, including the application plan, which is a) a statutorily required document, b) the subject of the provisional decision to grant at Stage 2, c) the subject of assessment at Stage 2 and d) the subject of the grant at the end of Stage 2. The competition passes through its varied stages ending up with a scheme which has passed the regulatory and the benefit test. It is inimical to the scheme of the legislation to suggest that an applicant, now armed with a provisional statement, could then apply for a licence for a different scheme.

As is set out above, the Act and Regulations require completion of a prescribed form with plans in prescribed form at Stage 1. There is simply no provision for different plans to emerge at Stage 2. The entire legislative contemplation is that the eventual licence will relate to the statutory plan submitted at the outset of Stage 1. It is plain that the legislation contemplates that the application assessed at Stage 2 will be that submitted for approval at Stage 1. This cannot be overcome by suggesting that there may be a premises licence in the future which is substantially different from the provisional statement granted at Stage 2. That being so, the Committee cannot assess the provisional statement application at Stage 2 on the basis that in future a different premises licence application may eventuate. If it could, then presumably the premises licence application which emerges need not even be the same as that assessed, but could be a different premises in a different location altogether. As a matter of legal and common sense, the boundary has to be fixed at some point, and in the view of the Council it is fixed at Stage 1, when a provisional decision is made to grant an application which has been subject to a process of public consultation.

If a premises licence application were permitted to proceed in respect of different premises, it will not benefit from the exemption from objection accorded by section 205 of the Act to premises licence applications which are for the same proposals as provisional statement applications. Therefore, there can be objections and even appeals against grants. The outcome may be that a provisional statement will have been granted, at the end of a long, public, resource-intensive competition, for a casino for which a licence is not then granted. That would cause all the resources devoted to the casino licence competition to have been wasted. This is outside the contemplation of the legislation, which is designed to result in a casino whose regulatory compliance has been considered with the right to involvement of all competing operators, responsible authorities and interested parties, not a casino whose regulatory compliance has still to be adjudicated upon and which may still be subject to appeal procedures to the magistrates' court and beyond. The Act is designed to avoid all of this by permitting appeals against Stage 1 grants but not Stage 2 grants. The Stage 2 grant is designed, therefore, to bring finality to the process, not the opportunity for the whole machinery of objection and appeal to be re-invoked.

Further, the words themselves "in reliance", which are used several times, are carefully chosen. The reason why they have been chosen is to make it clear that, in the unique case of casino licensing, the premises licence application which follows the provisional statement grant, is an application for the same premises, sharing the same fundamental determinants of premises under the Gambling Act, namely, the boundary or perimeter of the premises involved. If it does not mean that, then in what sense is the premises licence application made "in reliance on" the provisional statement at all? Would it permit a casino licence to be granted on the other side of the city? If not, why would it permit one to be built on the other side of a park? The purpose of the expression is to ensure that where a provisional statement has been granted, the premises licence application which follows is one in respect of which the regulatory and benefits questions have been asked and answered.

Imagine if it were otherwise. An authority may be particularly encouraged by the siting and design of the proposed building and consider that to be a benefit worth counting. However, having granted the provisional statement it may find that a different site and design is forthcoming which, although regulatorily compliant, would not carry the same benefit. Then, the authority would not be able to refuse the building on "benefits" grounds but would be compelled to grant it should it meet the regulatory test in section 153.

Furthermore, the competing applicants are interested parties in respect of the provisional statement application. They would not be interested parties for the subsequent premises licence application. This would create an injustice if a party were free to make an application for different premises at the subsequent stage. No such injustice arises if they are restricted to making an

application for the same premises, for in that case the competing applicants would have had a full opportunity to make representations upon the proposal at Stage 1.

The fallacy of the opposite position is clear. It would allow an applicant, without stating his true intentions at Stage 1, actually to win a competition based on a scheme, and then to apply for a premises licence for a scheme which has only a partial connection with that scheme, but made in partial reliance upon it. The authority ought to be in the position of being able to trust that the description of the application site in front of it represent the applicant's actual intention, not merely his current ideas.

A potential riposte is that it is always the case with a provisional statement that there might be objection to a later premises licence application. However, that argument is circular. It is precisely that situation that the competition is designed to prevent, by having all of the public objections to the scheme dealt with at Stage 1 and for the relative benefits to be assessed at Stage 2, yielding a winner which will actually be built for the benefit of the local area, not a scheme which will have to undergo further regulatory scrutiny, and in respect of at least part of it for the first time.

It is considered that any licensing authority would and should feel considerable anxiety that the public part of the process at Stage 1 yielded a provisional decision to grant a provisional statement for Scheme A, yet is being asked to assess the benefits of a different scheme, Scheme B, within a confidential process. The public perception would be of a behind closed doors assessment, whereby a different scheme may be adjudged to be the winner from that which was the subject of public consultation at Stage 1. This would be potentially damaging to public confidence in the process.

Furthermore, as stated above, if there is an appeal against a Stage 1 decision, then Stage 2 of the competition is suspended. In fact, Stage 2 may not even be commenced until the time for appealing has expired. This underlines that the scheme of the legislation is for the fundamental determinants of the premises, and in particular the extent of the boundary or perimeter of the premises, to be fixed at Stage 1, and for its benefits to be assessed at Stage 2.

It is necessary to address a potential argument that if an applicant cannot alter his proposal at the premises licence stage, then the provisional statement provisions in section 205 are meaningless. This is not right, for a number of reasons. First, the provisions in section 205, which govern provisional statements in general, do not assist in construing the provisions of section 175 and Schedule 9, which are specific to casinos and use different language. Second, in any event, the provisional statement provisions are of assistance to those who wish to make Part 8 applications without an operating licence, or without a right to occupy the premises, even where the scheme has evolved into a precise plan. Third, what section 205 essentially achieves is immunity from later objections where the premises have in fact been built out in accordance with the provisional statement plans. Where they have not, then the provisional statement is of no practical effect. None of that assists in construing Schedule 9, which simply provides a mechanism for the successful applicant for a provisional statement to convert his provisional statement into a premises licence without further ado. Nothing in section 205 affects the expression "in reliance" in the special, unique circumstance set out in Schedule 9. That expression is not concerned with whether representations may then be made on the application, which is governed by section 205, but whether a premises licence application will trigger a new competition, which is governed by Schedule 9. In the light of the structure and purpose of Schedule 9, the sense of it is that "in reliance on" means "on all fours with".

It is acknowledged that where provisional statements are granted in cases other than casino licensing competitions, there is no constraint upon later premises licence applications. However, that is simply another way of saying that the Act permits any premises licence application to be

made in any place. The effect of section 205 is merely that if the premises licence application is made "in respect of the premises" the subject of the provisional statement application, then representations upon it which could have been made previously cannot be made. It does not mean that in the unique context of the casino licence competition, a person may be granted a provisional statement or licence for Scheme A and then, armed with the grant, seek to build out Scheme B. That appears inimical to the statutory architecture of the competition process.

A further question is whether, in interpreting this legislation, it would be unduly restrictive in the context of regenerative proposals to insist on the same scheme, when plans evolve. It is not considered that it would. It is up to applicants to advance their proposals to the degree that they are, as a basic minimum, able to identify the premises for which a licence will be sought. In this case, applicants had six years to do so, following the making of the Categories of Casino Regulations 2008 on 19th May 2008 and prior to the commencement of the competition. It is clearly not unjust that by the start of a casino licence competition an applicant should know what it is proposing. That is inherent in any competition process. The Gambling Act 2005 draftsmen had no difficulty in locking in designs – the inability to vary a licence once granted is a good example of that. In this case, the provision is quite simple. If a premises licence is granted, it cannot be varied. If a provisional statement for a casino is granted after a complex competitive process, it cannot result in a premises licence application for a different casino.

Returning to expression "in reliance" in this particular statutory context, where must the line be drawn? How substantial must the change be before it is not made "in reliance?" In the Council's view, in the context of this legislation it is clear that the word "in reliance" means the same proposal as was advanced at Stage 1. When one considers the purpose of the expression, its meaning is obvious. Parliament was simply allowing for a process by which a provisional statement grant, following all of the requisite processes, becomes a licence grant, by saying that there does not need to be a new competition where the latter application is made in reliance on the former. It should also be pointed out that the expression "in reliance" is also used in section 176(6), where it plainly means "for the same premises." There is no reason to accord the same expression a different meaning here.

All of these considerations, in the Council's view, lead clearly and inevitably to the same conclusion. The scheme which is assessed at Stage 2 must be the same scheme applied for at Stage 1, in respect of which a provisional decision to grant has been made. The purpose of Stage 2 is to assess the respective benefits of the schemes for which such provisional decisions have been made, and not to permit behind closed doors amendments or prospective amendments to those schemes, outside the gaze, knowledge or participation of other stakeholders in the process.

Clifton Davies' letter places considerable reliance on the use of the word "expected" in section 204(1) of the Act and again in regulation 10 of the Gambling Act 2005 (Premises Licences) Regulations 2007. However, the plan which is provided as part of a premises licence application must conform to the same requirements as plans submitted as part of premises licence applications under regulation 4, including a requirement to show the extent of the boundary or perimeter of the premises. The use of the word "expected" simply means that that is the building which is expected to be constructed. It does not give any kind of special dispensation if a premises licence application is subsequently made for a building in a different place altogether.

The letter also places reliance on the Council's Advice Statement dated 20th June 2014, in which the Council stated that applications might be submitted showing an extended red line boundary. What is now being said is that such an extended boundary carries no statutory force, and therefore the original applications should all be treated – red line or no red line – as covering the whole Royal Pier site. Regrettably, the Council does not agree. The original applications should be treated as encompassing that for which they applied, which is to be determined by interpreting the

application form and the plan together. In only one case is it even arguable that an application has been made which includes Plots WQ2, WQ3 and WQ4, as stated above.

We are therefore sorry to say that nothing in the letter dissuades the Council from the clear view it has reached, applying the law as it stands and taking account of the public and competitive nature of these processes.

Finally, we think it proper that these views, which as we have said are subject to any contrary argument raised before the licensing authority, are shared with all licence applicants, since it directly concerns them. Please will you let us know whether you intend to share it with them or whether you wish us to do so or, of course whether and if so why you have an objection to such a course.

Yours sincerely

Barbara Compton
Head of Development, Economy and Housing Renewal