

The Committee has heard an application by Aspers Universal Limited to extend the period of a provisional statement granted in respect of Royal Pier Waterfront Development, Mayflower Park, Southampton. The provisional statement was granted for a period of three years on 22<sup>nd</sup> March 2016.

The Aspers proposal was one part of what the Committee in its decision described as an ambitious and exciting one for Southampton. It considered that the proposed casino and the scheme were apt for the site, attractive, thoroughly presented and justified, backed by credible participants and supported by a sufficient record of progression to enable the Committee to make a judgment about its likelihood of fruition. On that occasion, the Committee also had the benefit of an Advisory Panel which included experts on the casino industry specifically and wider regeneration initiatives more generally. It concluded that the Aspers proposal was likely to result in the greatest benefit to Southampton of all the schemes presented to it.

At the time of grant, the Committee determined that in accordance with Schedule 9 paragraph 10(3) of the Gambling Act 2005, the period of the provisional statement would be three years. It stated that it expected Aspers to have applied for a premises licence for the proposal within that period. It also noted that Aspers was entitled to apply for an extension of the period, which would enable it to explain the progress of the scheme. It noted that this would enable the licensing authority to retain some control over the pace and timing of delivery.

In the event, no significant progress has been made towards delivery of the scheme.

### **The application**

In its application dated 27<sup>th</sup> March 2019 for an extension of the period for a provisional statement, Aspers explained that the lack of progress of the wider scheme, and therefore its casino within the scheme, was due to circumstances beyond its control. Specifically, the construction of the casino was wholly dependent upon the reclamation from the sea of the land upon which it would be built, and that work had not yet commenced. It has stressed that it is as committed as ever to the venture. It requested an extension of three years to the provisional statement.

Aspers provided further detail in its letter of 7<sup>th</sup> May 2019. It explained that the developer, RPW (Southampton) Limited undertook some limited activity in 2016, securing planning permission for the relocation of the Red Funnel terminal and agreeing a masterplan for the overall Royal Pier development scheme, which it believes had the support of the stakeholders. However, there was pressure on feasibility due to the infrastructure costs associated with land reclamation. Furthermore, in 2017 the financial backers of the developer ran into financial difficulties, which effectively meant that no further progress was made, despite abortive efforts by the backers to find alternative funders for the scheme.

Aspers refers to the “obvious commercial opportunity presented by the Royal Pier scheme”.

Aspers frankly accepts that it cannot say what the position will be at the end of a further period of extension. However, it hopes that either the existing developer or a new party can get to a position where the scheme has the credibility to succeed, with a planning consent capable of implementation.

Following advertisement of the application, the Council has received three representations.

### **Representations**

Genting Casinos UK Limited, which was a rival applicant for the large casino licence, has stated that it has no objection to the application. It does, however, submit that if the Council wishes to award a new provisional statement or premises licence, it should restart the casino competition process and invite new competing applications to be made.

Ros Cassy, who is the convener of the Old Town Community Forum, objected to the extension by an email dated 13<sup>th</sup> September 2019. She states, first, that it would be wrong to extend the provisional statement since it is part of a scheme which is not proceeding. Second, she states that due to the increase in the density of the local population, there is a further premium on green space, which alters the balance between economic regeneration and preservation of green space. Third, she is concerned about the environmental impact of people leaving the casino late at night, particularly in an era of reduced public services including the police. In a supplemental email dated 19<sup>th</sup> September 2019, Ros Cassy states that Members of the Forum were also opposed to the development on the ground that there was now increased information regarding problem gambling and its harmful effects.

Graham Linecar, the Secretary of Southampton Commons & Parks Protection Society (“SCAPPS”) objected to the extension by an email dated 13<sup>th</sup> September 2019. SCAPP’s principal concern is the unsuitability of a gambling establishment next to a public park and children’s play area. He states that there is evidently no chance of the scheme proceeding in any event. He is concerned that a smaller scheme may be brought forward, both because of the uncertainty this would create as to the future of the park in the meantime and the likelihood that in any such scheme Aspers would bring their proposal further inland from its current position in the derelict pier, so further threatening the parkland and imposing an unwanted juxtaposition between the casino and children’s play space.

### **The hearing**

The Committee has heard from Mr Martin Heslop QC on behalf of Aspers.

He stressed there were no objections from relevant authorities or the rival applicants for the large casino licence.

He stated it was entirely a matter for the discretion for the Committee whether the application was granted or refused.

He referred to the power to grant an extension in Schedule 9 paragraph 10(4) of the Gambling Act 2005, which gave a broad and unfettered discretion to grant, subject to the provisions of the Act, but should act fairly, openly and with regard to the licensing objectives and the legitimate representations made.

He emphasised that in granting the provisional statement the Committee had been impressed with the scheme and Aspers' track record of delivery. It had considered that the scheme was head and shoulders above those of the other competitors.

He stated that the failure to progress the scheme had been wholly outside the control of Aspers and was dependent on the reclamation of the land on which the casino would sit, which had not yet started. However, Aspers remained totally committed to the scheme, hence the necessity for this application.

He stated that it would not be true to say that Aspers had done nothing. Aspers remained anxious to proceed with the scheme and had done all it could. It had maintained regulator contact with the developer and the financiers of the development. It had made clear to them Aspers remained ready to start as soon as the land is ready. It had invested a great deal of time, finance and resources to achieve that aim. Representatives had been to Southampton and met with developers and financiers on a regular basis, making it clear it wished to see the scheme proceed as soon as possible. Not having any contractual relationship with the developers, it was in no position to require them to proceed. It had maintained close contact with the council and the stakeholders, as had its property consultants. There was little more that Aspers could do or could have done. It had not sat back. And, when given the opportunity, Aspers delivers.

Mr Heslop then addressed the benefit of granting the extension. He stated that it was understood that the Council was looking for an alternative developer. If so, the existence of the provisional statement would act as a catalyst for attracting a new developer. The Committee had accepted in 2016 that the presence of Aspers would help to drive the scheme. The same applied now.

He stated that the Committee had contemplated in 2016 that there may be an extension application, recognising that a situation such as this may arise and that Aspers may come before the Committee to explain the state of progress which it had done.

The situation was not of Aspers' making. It had done everything it could. It had a track record of delivery of schemes.

Further, refusing the application creates the spectre of a further application which he said was in no-one's interests.

In dealing with the representations, he said that the Committee was confined to the licensing objectives and could not be dealt with on moral or planning grounds.

Dealing with SCAPPS' objection, he pointed out that the site of the development could not be moved, since the provisional statement applied to this particular site. If there is no development, then there cannot be any harm as suggested by SCAPPS.

Addressing Ros Cassy's objection, he said that if the Council wishes to continue the scheme for the benefit of the city, which he understood it did, it would need to seek a new developer, and the existence of a provisional statement and a well-regarded anchor tenant would make the proposal more attractive to a prospective developer.

In summary, he asked what the Committee had to lose by granting the application, but a great deal to gain. If there is no new developer, the provisional statement would lapse. If the Council wishes to find an alternative developer, there is clear benefit in prolonging the provisional statement. To refuse the extension would be undesirable because it would involve restarting the whole process.

The Committee asked Aspers whether it had made investigations as to any changes in the area. Aspers stated that there had been a planning application on the site which had been withdrawn. It was too early for a new feasibility study, although there had been development around the site, including residential development.

The Committee asked who would pay for reclamation costs and who would deal with Crown Estates. Aspers stated the developer was supposed to reclaim the land. Aspers also accepted that the provisional statement was for this particular site. Aspers could not move the site. If a new site came forward Aspers would work to ensure the casino could be developed in its existing location.

The Committee asked whether if an extension was granted it may be faced with a further application later. Aspers stated that it had spent a lot of time and money winning the provisional statement and remains committed to the site. There had been an application to relocate the Red Funnel ferry and much work had been done on the ecological impacts of land reclamation. So it would not be necessary to start all over again.

The Committee asked whether the benefits would be the same given the changes in the area. Aspers said that the scheme brings in additional benefit, and simply added to the development in the area. It could not say exactly what an alternative scheme would be, but would likely comprise the same elements.

The Committee also asked whether the casino might deter some developers. It could not say, but it is important that there is an anchor tenant with the desire to enter a long lease.

The Committee asked whether Aspers had taken into account the changing nature of gambling as a whole, whether it would help to support other elements making the scheme as a whole more attractive, and child safeguarding. In answer, it was said that the Aspers operation had not changed. Aspers had a mixed offer, not just gaming and protection of the vulnerable was at the forefront of Aspers' business. It did better in locations where there was a broad offer, e.g. Stratford, London.

On behalf of the Old Town Community Forum it was asked what evidence there was that an extension would make it more likely that the development would proceed in the current economic climate. Aspers accepted that there was no evidence. Aspers was an operator not a developer. There is no current feasibility study. It was also asked whether a scheme would come forward in the next three years. Aspers said if the process moved forward, it was hoped that the scheme would be delivered. It accepted it was unlikely that the reclaiming would happen in the next 3 years.

The Old Town Community Forum further asked whether there would be public health impacts of the scheme in terms of air pollution and NHS costs. The reply was that the Committee had assessed the benefit in 2016 and had decided that it would be beneficial. It was also suggested that public health benefits were irrelevant and that the Committee had made an assessment in 2016. Legal advice was taken and advice was given that the Committee is entitled to take account and make a current day assessment of any benefits or disbenefits in deciding whether to extend the provisional statement. Aspers therefore added that it had established CARGs in all cities in which it operates, focussing on responsible gambling in partnership with the community. Aspers could not say whether it had supported the reduction in maximum stake for Category B2 machines from £100 to £2. It could not say what contributions made to national research, education and training, but through the Schedule 9 agreement it was to make financial contributions to the community. It also works with the Gambling Commission. It was asked whether casino workers suffered health problems, e.g. through smoking, and said that Aspers had good policies and procedures for employees. The Forum finally asked whether it was aware of any recent research into the impact of casinos on local communities. Aspers said it did not have an Aspers officer there and so could not answer.

Mr Linecar asked how feasible is it that an alternative scheme would leave the casino where it is. Aspers said that a new scheme would need significant reclamation in any case and that the casino could be left in its current proposed position. It was accepted that the provisional statement was for this particular site and that it could not be moved.

### **Old Town Community Forum**

The Forum representatives said that the Old Town is a residential area but the demographic was changing and there were more young families, which raised questions of vulnerability. There is increasing use of the park. This is not a resort

area. It is a neighbourhood with the character of a village. There is no benefit to the local area from the casino. There might be benefit to the area as a whole but not locally. The area is already polluted due to the highway and the casino would bring more. The police are overstretched and this would attract further late night crime. It is wrong to extend the provisional statement when the underlying scheme has not progressed.

The Forum representatives added that access to green space had a positive effect on the health of the community. Recent research had reinforced this. The loss of green space is damaging to welfare and imposes costs on the NHS. Therefore, the preservation of green space is economically beneficial. The casino threatens these public health and economic benefits. It also increases the risk of problem gambling, and a significant proportion of casino players were problem gamblers. Research also shows that proximity to casinos increases problem gambling, and that the proximity of the residential population was therefore of concern. A resort casino should not therefore be placed next to a residential community, and that its location would impose a cost on local services. Further, Mayflower Park is used to a large extent by lower income, disadvantaged groups, including children. Further, the city centre population had doubled in the last 10 years. The scheme normalises gambling as a pastime, the costs of which are borne by the City. This is an opportunity for the Council to reconsider the matter in line with its green and health strategies and its aspirations to be a city of culture.

The Forum referred to Aspers' question what is there to lose by extending the provisional statement. It was said three years ago that the casino would remain a catalyst. It is still said that it would be a catalyst. In the meantime, the park remains in a poor unloved state. To grant the extension means that the park would remain unloved and uncertainty would continue.

Mr Linecar said that Mayflower is the only city centre green space on the waterfront. It is popular with city visitors. SCAPPS had and continues to have a concern that a gambling establishment should not be located next to a public park. In 2016, the casino was to be sited within a large development including a replacement park, on reclaimed land. When the RPW planning application was submitted, SCAPPS objected. The replacement park, it said, was a poor substitute, being above an underground car park, surrounded by bulky and high buildings. SCAPPS expresses concern regarding the uncertainty of what would come forward. Mr Linecar's understanding was that the planning application was still extant, but it is clear there is no permission, and the Council has announced its withdrawal from the partnership with the developer. Aspers has a hope but no evidence that a new scheme and developer will come forward. We can't know the content of the notional scheme, what mix of uses, whether it will be the same area, or what would happen with Mayflower Park. It is highly likely it would affect the park. SCAPPS could not foresee any condition which would safeguard against juxtaposition of major gaming establishment with play area used by children.

## **Closing submissions**

The objectors did not wish to make closing submissions.

In closing Aspers said that the existence of the scheme as an anchor helps to catalyse the scheme. Many of the objections made had either been dealt with in 2016, or were planning matters and did not fall for consideration by this Committee.

## **Legal advice**

The Committee received legal advice as follows:

(1) If the provisional statement is extended, the current site for the casino may not be moved under this provisional statement. If a new developer came forward with a different scheme, it would not be bound to build out the development as presented in 2016, but it would be bound to leave the casino in precisely the same place.

(2) If the provisional statement is not extended, the Council is entitled but not bound to run a new competition, at which point anybody could make a proposal anywhere in the city.

(3) The Gambling Act 2005 does not set out criteria for the grant or refusal of extensions of provisional statements. As such, the Committee has a discretion which it should exercise so as further the purposes of the Act. These are both the promotion of the licensing objectives, which are the principal concern at Stage 1 of the casino competition process, and the benefit to the area of the authority, which is the principal concern at Stage 2. In determining the question of benefit, the Council's evaluation criteria and scoring matrix scored proposals out of 1,000, with 750 points going to regenerative impact (including physical regeneration, tourism, employment opportunities and financial contributions towards regeneration), 125 points went to the quality of proposals to address problem gambling, and 125 points went to other financial contributions. The Committee is entitled to bear in mind the hoped for benefits in determining this application.

(4) The Committee's discretion therefore goes beyond the licensing objectives, although this does not extend as far as moral grounds. Further, the likelihood of planning permission is a statutorily irrelevant consideration.

(5) The Committee has been asked to take account of the potential benefits of extending the provisional statement in helping to attract a new developer to deliver the scheme. This is a relevant benefit, whose merits and weight fall for consideration.

(6) Aspers has suggested that refusing the extension would create a disbenefit, namely the potential for a further competition; so that extending the provisional statement creates a correlative benefit. Whether there is a further competition would

be a matter for the Council, and so whether the prospect of a further competition would be regarded as a potential benefit or a disbenefit is a matter for this Committee to weigh.

(7) The Committee should also note and take into account the disbenefits alleged by the objectors to the application in terms of environmental impact, harm to the licensing objectives, and uncertainty in relation to the park. The merits and weights of those points are all matters for the Committee. None of these is, on analysis, a moral ground.

(8) The Committee is entitled to take account of the merits of the scheme as a whole. It is not bound by the criteria before it in 2016, or indeed the findings made in 2016. It cannot take account of the likelihood of the scheme obtaining planning permission, but it can take account of matters which are also planning matters, as case law has conclusively established.

(9) The claimed impact on children is an impact on group with protected characteristics. Accordingly, section 149 of the Equality Act 2010 is in play. The substance of section 149 is set out in paragraph 18 of the report. The Committee should have specific regard to this claimed impact, and exercise its duties to have regard to the matters in section 149 with substance and rigour, albeit that the Public Sector Equality duty does not require any particular result.

(10) The site of the casino cannot legally be moved under this provisional statement, so that any concern that the period of extension would be used to resite the casino under this provisional statement is irrelevant.

(11) The Committee should also consider its duties under the Crime and Disorder Act 1998 and the Human Rights Act 1998 as set out in paragraphs 16 and 17 of the report.

(12) The Committee should consider the reasons given for delay in implementation of the scheme, the prospects of realisation of the scheme and the consequences of the grant or refusal of an extension.

(13) How the Committee weighs all of these factors, and any other relevant factors, is a matter of judgment for the Committee.

(14) Its options are to grant the extension for three years as asked, grant for a lesser period, or refuse the extension altogether.

All those present confirmed that they did not take issue with any of the legal advice.

## **Decision**

In making this decision, the Committee has taken account of all that it has heard and read, and has applied the legal advice which it has been given.



The Committee is aware that the Aspers proposal, and the wider scheme of which it forms part, was considered to be an excellent application when it was made, for the reasons set out in its decision in 2016.

The Committee has not heard sufficient evidence to reverse its previous view. It accepts that the scheme would result in at least some benefit to the area for the reasons previously given. While it accepts that there has been surrounding development over the last three years, it does not consider that there are fundamental differences in the surrounding area now as against three years ago.

Therefore, while the Committee is not bound by its decision in 2016 to grant this extension, it gives significant weight to its previous decision.

It acknowledges that all gambling establishments may be associated with problem gambling, but the Gambling Act provides safeguards against such problems, the Schedule 9 agreement provides for further commitments in relation to problem gambling, and Aspers themselves are a reputable operator. So far as children are concerned, the provisional statement requires that gambling activities shall not be visible from the exterior of the premises. Further, the Committee has no evidence that casinos pose a significant risk to crime and disorder in the area, or any risk to children. While the casino may contribute to traffic pollution, this would be true of any development, whether it has a casino in it or not.

As to such negative impacts, the Committee is aware that there have been no objections to this application by any responsible authority or public health body.

Any proposed development, whether in the same or different form, would require planning permission, and at that stage a full assessment of impact will be made, including any impacts arising from the juxtaposition of the development with a park including a play space. On that point, the planning application would be determined on its own merits. The planning authority would not be bound by any determination made by this Committee.

Further, if a proposed developer no longer wished to have a casino, it would not be bound by this extension to incorporate the casino in the scheme.

The Committee notes that the development has not come forward and there is no current evidence of feasibility. However, as a matter of common sense it accepts that a consent for an anchor tenant which is ready and willing to proceed such as a casino may help to catalyse the development. On the other hand, if the development does not proceed, nothing is lost by the extension.

For those reasons, the Committee is, on this occasion, prepared to extend the provisional statement for a further period. It considers that the appropriate extension is three years, to maximise the possibility that this development now proceeds. If it does not proceed and a further extension application is made, the decision today should not be cited as a reason why the further application should be granted.