

Licensing Committee

Friday, 25th January, 2013

PRESENT: Councillor G Hyde in the Chair

Councillors R Downes, B Gettings,
G Hussain, B Selby and G Wilkinson

73 Apologies for Absence

Apologies for absence were received from Councillor Armitage, Chair of the Committee and from Councillors Bruce, Buckley, Charlwood, Dunn, Hanley, Khan, P Latty and Townsley.

74 Election of the Chair

RESOLVED – That Councillor G Hyde be elected as Chair of this additional Committee meeting, called to deal with just one item of business

75 Exempt Information - Possible Exclusion of the Press and Public

The Committee noted that appendices 1 and 2 of the report submitted as Agenda item 6 were marked exempt under the provisions of Access to Information Procedure Rules 10.4 (3) and (5).

The Committee considered that as the contents of the documents related to Stage 2 of the Large Casino Application Process, they should remain exempt – as provided for in the Code of Practice applying to the process with which the council must comply. Members were however also aware of a request submitted by an applicant involved in the Large Casino process to address the Committee. Members agreed that it was not unreasonable to permit the applicant to make their verbal submission however they proposed that Appendices 1 and 2 remain exempt from public scrutiny and that the details contained within should not be discussed at length in the meeting.

RESOLVED – That, if necessary, the public will be excluded from the meeting during consideration of that part of the agenda designated as exempt on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present there would be disclosure to them of exempt information as designated at Appendix 1 and Appendix 2 of the report referred to in minute 78 in terms of Access to Information Procedure Rules 10.4 (3) and (5) on the grounds that it is not in the public interest to disclose the contents of the documents as the information relates to the financial or business affairs of a particular person (including the authority holding that information) and also pertains to information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

76 Late Items

No formal late items of business were added to the agenda. The Committee did however permit the applicant to table additional documents at the meeting in support of their verbal submission (minute 78 refers).

77 Declaration of Disclosable Pecuniary and other Interests

There were no declarations of interest

78 Large Casino

The Head of Licensing and Registration submitted a report advising the Committee of an issue which had arisen during the Large Casino Stage 2 dialogue process in respect of plans accompanying applications.

The Head of Licensing and Registration attended the meeting and highlighted the two main points of principle on which the Committees' ruling was sought:

- 1) Whether application plans could be amended at Stage 2 of the process
- 2) Whether the Casino Advisory Panel, appointed by the Committee, could assess a Stage 2 scheme which was materially different from that which was the subject of a Stage 1 grant, on the grounds that, should a Provisional Statement be granted on the basis of the Stage 1 submission, the ensuing premises licence application would be made on the basis of an amended scheme

The Committee received and permitted a request from one of the applicants who had been successful at Stage 1 of the Large Casino process to address these points of principle, having regard to the proposals contained within their application entering into the Stage 2 process. It was noted that no request to amend the application plans had been received, so point 1) above was not considered.

Mr C Moger QC was permitted to address the Committee and submit additional documentation which he referred to during his submission. At the outset, Mr Moger indicated his intention to waive the confidentiality attributed to the content of the discussions and documents tabled with the consent of the Committee for the purpose of the discussion although they may reveal some details of the Stage 2 process pertinent to his client. A key point of his submission can be précised as "should this applicant win the competition and be awarded a provisional statement, then the amended scheme would be the subject of a later premises licence application. "He therefore argued that the amended scheme should be assessed as part of the benefits at Stage 2. Mr Moger suggested that the relevant question therefore was whether the licensing authority, having before it an application for a provisional statement for premises, could assess the benefits of the application on the basis of different premises.

The Committee gave close consideration to those submissions and the documents to which Mr Moger made reference. The Committee also had regard to the documents appended to the report.

The Committee carefully considered all the submissions made. In particular paragraph 10 of Schedule 9 to the Gambling Act 2005 (GA2005), which permits an application for a premises licence to be made following the grant of a provisional statement, provided that the application is made "in reliance on" the latter. Members noted a key consideration as being whether, having

regard to the meaning, purpose and context of paragraph 10, a subsequent application for a premises licence is made “in reliance” on a provisional statement when that application relates to different premises.

The Committee noted that under Stage 1 of the process this particular applicant had been granted “in principle approval” for a Provisional Statement and that Section 205 of the GA 2005 applied to any subsequent application for a premises licence. That section prevented further consideration of representations which could have been made at the provisional statement stage provided that the application was made ‘in reliance’ on the provisional statement .

Members agreed that Stage 1 should be seen as the “regulatory stage” whereby interested parties and others could make representations on applications made and the proposals therein.

Members however agreed with Mr P Kolvin QC and their own Legal Advisor, that it followed that Stage 2 should not involve reconsideration of those matters addressed at Stage 1 and that it was inherent therefore that the proposed premises in Stage 2 bids would not be significantly different from those within the Stage 1 application.

The Committee accepted the submission from Mr Moger that it was not bound by any advice given to it by its own Legal Advisors. Members weighed the advice they received from those Advisors in the balance with the submissions made by Mr Moger. Members also noted Mr Moger had the opportunity to respond to the advice which the Committee received from its advisors at the hearing.

The Committee noted that its Advisors did not alter their advice in consequence of Mr Moger’s response.

RESOLVED –

- a) After hearing full representations, the Committee decided that 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.
- b) That it is not open to the Committee, or the Advisory Panel, to assess at Stage 2 the benefits arising from a scheme which is different from the scheme at Stage 1 in the sense of relating to different casino premises entirely which were not proposed at Stage 1.