



LICENSING COMMITTEE

MEETING TO BE HELD IN CIVIC HALL, LEEDS ON

FRIDAY, 25TH JANUARY, 2013 AT 2.00 PM

ADDITIONAL MEETING

MEMBERSHIP

Councillors

- S Armitage - Cross Gates and Whinmoor;
- K Bruce - Rothwell;
- N Buckley - Alwoodley;
- R Charlwood - Moortown;
- R Downes - Otley and Yeadon;
- J Dunn - Ardsley and Robin Hood;
- B Gettings - Morley North;
- T Hanley - Bramley and Stanningley;
- G Hussain - Roundhay;
- G Hyde - Killingbeck and Seacroft;
- A Khan - Burmantofts and Richmond Hill;
- P Latty - Guiseley and Rawdon;
- B Selby - Killingbeck and Seacroft;
- C Townsley - Horsforth;
- G Wilkinson - Wetherby;

Agenda compiled by:
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A G E N D A

Item No	Ward/Equal Opportunities	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 25 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 25, written notice of an appeal must be received by the Head of Governance Services at least 24 hours before the meeting)</p>	
2		Item 6 Appendices 1 and 2	<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p>RESOLVED – That the press and public be excluded from the meeting during consideration of those parts of the agenda designated as containing exempt information 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 press and public were present there would be disclosure to them of exempt information</p>	

Item No	Ward/Equal Opportunities	Item Not Open		Page No
3			<p>LATE ITEMS</p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p>DECLARATION OF DISCLOSABLE PECUNIARY AND OTHER INTERESTS</p> <p>To disclose or draw attention to any disclosable pecuniary interests for the purposes of Section 31 of the Localism Act 2011 and paragraphs 13 -18 of the Members' Code of Conduct. Also to declare any other significant interests which the Member wishes to declare in the public interest, in accordance with paragraphs 19 -20 of the Members' Code of Conduct.</p>	
5			<p>APOLOGIES FOR ABSENCE</p>	
6		10.4(3, 5)	<p>LARGE CASINO</p> <p>To consider the report of the Head of Licensing and Registration advising the Committee of an issue which has arisen during the Large Casino Stage 2 dialogue process in respect of plans accompanying applications and seeking Members' views on the issue.</p> <p>Please note that Appendices 1 and 2 of the report are marked exempt under the provisions of Access to Information Procedure Rule 10.4 (3) and (5)</p>	3 - 44

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CONFIDENTIAL AND EXEMPT ITEMS

The reason for confidentiality or exemption is stated on the agenda and on each of the reports in terms of Access to Information Procedure Rules 9.2 or 10.4(1) to (7). The number or numbers stated in the agenda and reports correspond to the reasons for exemption / confidentiality below:

9.0 Confidential information – requirement to exclude public access

9.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed. Likewise, public access to reports, background papers, and minutes will also be excluded.

9.2 Confidential information means

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
- (b) information the disclosure of which to the public is prohibited by or under another Act or by Court Order. Generally personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

10.0 Exempt information – discretion to exclude public access

10.1 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed provided:

- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies, and
- (b) that resolution states by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below) the description of the exempt information giving rise to the exclusion of the public.
- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.

10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

10.4 Exempt information means information falling within the following categories (subject to any condition):

- 1 Information relating to any individual
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes –
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

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Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 25 January 2013

Subject: Large Casino

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4 (3) and 10.4 (5) Appendix number: 1 and 2	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. Leeds is one of 8 councils with the ability to issue one large casino licence under the Gambling Act 2005. Licensing Committee will recall approving an application pack and evaluation methodology for the second stage of this 2 stage process and appointing an Advisory Panel to assess each proposal according to the agreed and published methodology. The Panel are empowered to enter into a dialogue with each applicant on behalf of the licensing authority to refine and enhance their proposals. The best and final offers from each applicant are then considered and the Committee will receive a report from the Panel with a proposed evaluation score so that it can determine which application to grant.
2. An issue has arisen at Stage 2 in which one of the applicant wishes to rely upon plans which are different to the plans approved during stage 1. The applicant believes that the revised plans enhance the benefits offered by its scheme. The Advisory Panel has reported that it cannot evaluate the scheme until it has a ruling on whether the variation to the plans is legally permissible or not. This report provides the relevant information for and seeks a ruling from the Licensing Committee on that matter.

Recommendations

3. That Licensing Committee considers the report and provides a ruling for the Advisory Panel on the following issues
 - Can application plans be amended at Stage 2?
 - 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 for the amended scheme?

1 Purpose of this report

- 1.1 This report advises Members of an issue that has arisen during the Stage 2 dialogue process and seeks a ruling to guide the Advisory Panel on whether a change in the plans supporting the application between stage 1 and stage 2 of the process is legally permissible and if not, how the Panel should treat any benefits offered as a result of the variation to the plans.

2 Background information

- 2.1 Leeds is one of 8 councils with the ability to issue one large casino licence under the Gambling Act 2005. The licensing process involves two stages; the first being a regulatory stage in which the prospective licensee submits a standard application form (including plans as required by the regulations) and in respect of which agencies and the public can make representations, and a second stage in which each prospective licensee submits a proposal which demonstrates the benefits offered by their application. The council will grant the licence to the application which, in the opinion of the authority, is likely to result in the greatest benefit to the authority's area.
- 2.2 Licensing Committee will recall approving an application pack and evaluation methodology for the second stage of this 2 stage process and appointing an Advisory Panel to assess each proposal according to the agreed and published methodology. The Panel are empowered to enter into a dialogue with each applicant on behalf of the licensing authority to refine and enhance their proposals. The best and final offers from each applicant are then considered and the Committee will receive a report from the Panel with a proposed evaluation score so that it can determine which application to grant.
- 2.3 A number of applications were submitted at Stage 1. All the applications were accompanied by plans which were in the prescribed format in accordance with the regulations. All the applications were duly advertised and subject to a representation period. Any responsible authority, interested party (the public) or competing applicant could make a representation based upon the applicant and the submitted plan. Any representations were then considered at a public hearing before a Licensing Sub-committee. Any party who made a representation had the right to appeal the decision. Stage 2 could not commence until Stage 1 and any subsequent appeals were completed. At the end of Stage 1 all remaining applicants were invited to make a Stage 2 submission.
- 2.4 A Code of Practice for determinations under paragraphs 4 and 5 of Schedule 9 to the Gambling Act 2005 relating to Large and Small Casinos was issued by the Department for Culture Media and Sport in 2008. Under the Act the council must comply with that code. That Code provides

5.4.5. A licensing authority may not, during the second stage, discuss the details of a person's application with the other competing applicants without the person's permission.

5.4.6. A licensing authority must put in place a protocol governing the storage of confidential information submitted to them during the second stage, so as to maintain the confidentiality of that information.

3 Main issues

- 3.1 One of the Stage 2 applicants has submitted a proposal which relies on plans of the site to be licensed which are different to those submitted at Stage 1 of the process. It is the applicant's contention that it is legally permissible for the council to consider and evaluate a stage 2 submission which relies on the new plans.
- 3.2 The plans submitted at Stage 1 and the plans upon which the applicant now bases their Stage 2 submissions are provided in Appendix 1 which has been designated as potentially exempt information pursuant to the Access to Information Procedure Rules, rule 10.4 (3) as relating to the financial or business affairs of a person.
- 3.3 Legal advice has been obtained on the question of whether it is possible to submit different plans at this stage in the process. That advice is that it is not legally permissible. This has been discussed with the applicant and the relevant correspondence is provided for Members information at Appendix 2. This has been designated as potentially exempt under rule 10.4 (3) and 10.4 (5).
- 3.4 The public interest in maintaining the exemption outweighs the public interest in disclosing the information as a result of the Code of Practice referred to in paragraph 2.4 above.
- 3.5 The Advisory Panel has indicated that it requires guidance from the licensing authority as to whether it is legally permissible to have different plans at this stage and if not, how it should evaluate any benefits offered which are as a result of or dependent upon the revised plans.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Stage 1 of the process provides the opportunity for residents and affected Ward Councillors to comment on applications. Due to the nature of the overall process there is no further consultation at stage 2. There are therefore no implications for consultation and engagement arising from this report.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 No implications

4.3 Council policies and City Priorities

- 4.3.1 The Statement of Licensing Policy sets out the principles the council will use to exercise its functions under the Gambling Act 2005. Applicants for licences and permits for gambling are expected to read the Policy before making their application and the council will refer to the Policy when making its decisions.

4.3.2 The licensing regime contributes to the following aims:

By 2030, Leeds will be fair, open and welcoming

- Local people have the power to make decisions that affect them
- There is a culture of responsibility, respect for each other and the environment
- Our services meet the diverse needs of our changing population
- Everyone is proud to live and work

By 2030, Leeds' economy will be prosperous and sustainable

- Opportunities to work with secure, flexible employment and good wages

By 2030, all Leeds' communities will be successful

- Communities are safe and people feel safe

4.3.3 The licensing regime contributes to the following city priorities:

Best city... for communities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.4 Resources and value for money

4.4.1 No implications.

4.5 Legal Implications, Access to Information and Call In

4.5.1 There is no right of appeal against a decision at stage 2. Should the change of plans be permitted and that applicant is awarded a provisional statement as a result then the other unsuccessful applicants may seek to challenge the process through judicial review. Should Members determine that a change of plans is not legally permissible then the applicant who seeks to advance that option may equally challenge that decision through judicial review proceedings.

4.5.2 Appendix 1 and 2 which show the detailed plans and the correspondence between the applicant and the licensing authority are designated as potentially exempt.

4.5.3 This is a licensing decision and relates to a council function. As such it is not eligible for call in.

4.6 Risk Management

4.6.1 Legal advice will be available to Members determining this issue given the potential for legal challenge.

5 Conclusions

5.1 That Members should on the following issues and provide a ruling for the Advisory Panel on the following issues :

- Can application plans be amended at Stage 2?

- 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 for the amended scheme?

6 Recommendations

- 6.1 That Members should determine whether it is legally permissible to amend the application plans at Stage 2 And whether the Advisory Panel can 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 for the amended scheme?

7 Background documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

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