

**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 documents<sup>1</sup>**

- 7.1 None

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<sup>1</sup> 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.