



HARRIS H A G A N

Specialists in Gambling and Leisure Law

Dawn Baxendale  
Chief Executive  
Southampton City Council  
Civic Centre  
Southampton  
SO14 7LY

By Email and Post : [Dawn.Baxendale@southampton.gov.uk](mailto:Dawn.Baxendale@southampton.gov.uk)

16 March 2015

Your Ref:

Our Ref: JXH/A00001/0049

Dear Madam

**Southampton Large Casino Competition  
Royal Pier Waterfront Development – Legal Issue Relating to Delineation of  
“Premises” in Stage 1 Applications  
Proposed Solution**

We act for Aspers Universal Limited which forms part of the Aspers Group.

Our client was successful at Stage 1 of the Large Casino Competition in Southampton in relation to its proposed casino at the Royal Pier Waterfront Development (“RPWD”). This is a development which our client has been monitoring as a potential casino location for almost ten years and in respect of which it has invested an enormous amount of time and resources, both in terms of developing its own casino proposal and assisting Southampton City Council (“SCC”) generally with its preparations for the Large Casino Competition.

It is of grave concern to our client that SCC, on legal advice from Philip Kolvin QC, now seems minded to refuse even to consider a Stage 2 application by our client, or indeed by at least three of the other four successful Stage 1 applicants in relation to the RPWD. This is purely on the basis that the proposed location for the casino has now changed, for reasons entirely beyond any of the applicants’ control, to a new location still within the RPWD. It will be hugely disappointing to our client and no doubt to the other RPWD applicants, but more importantly to SCC, if they are unable to participate in the Large Casino Competition. This is because the significant benefits to Southampton of a fair competition involving the RPWD, SCC’s preferred location for the casino, are lost. These benefits were, we believe, the very reason that SCC embarked upon the long and tortuous process of winning the right to award one of only eight large casino licences in the UK, against strong competition from other licensing authorities.



**Harris Hagan**  
Solicitors

6 Snow Hill, London EC1A 2AY

Tel: +44 (0)20 7002 7636 Fax: +44 (0)20 7002 7788 email: [info@harrishagan.com](mailto:info@harrishagan.com) website: [www.harrishagan.com](http://www.harrishagan.com)

Partners: Julian Harris, John Hagan

Consultants: Elizabeth Southorn, David Stevens

Regulated by the Solicitors Regulation Authority (00401231)

These benefits are being lost as a result of what we believe can, at best, and with respect to Mr Kolvin, be described as an unduly strict and extremely literal interpretation of the gambling legislation, showing no regard for the commercial and practical realities of building a casino within such an ambitious and important proposed development. At worst, the advice to SCC is simply wrong. Indeed, we would contend that if Mr Kolvin's legal analysis is correct, it was always impossible for any of the RPWD applicants to make an application for a casino, given the potential for it to move within the RPWD development, without assuming a substantial and unacceptable level of legal risk, which simply cannot have been what was intended by Parliament. In this regard, Mr Kolvin acknowledges that even on his own analysis the position in relation to the single surviving application by Genting is arguable.

We refer to the exchange of correspondence between the developer of the RPWD site and SCC, namely the letter from Clifton Davies representing the developer dated 23 January 2015 and SCC's response, which all applicants were sent late on 10 March 2015. We do not propose to embark upon a forensic analysis of SCC's legal arguments, nor are we presently seeking a hearing of the Southampton Licensing Committee to challenge this interpretation. It seems to us that there is little point in doing so given that SCC will, inevitably, be advised at that hearing by Mr Kolvin, whose position is well known. These legal arguments reflect the advice which Mr Kolvin gave in the Leeds Casino Competition and it is apparent that, notwithstanding that the decision of the Leeds Licensing Committee is not binding on the Southampton Licensing Committee and the very different factual circumstances, Mr Kolvin will not depart from his original opinion. Nevertheless, we reserve our right to challenge that legal interpretation pending your response to this letter. The purpose of this letter is rather to put forward what we believe to be a sensible, pragmatic and fair solution which will meet the legitimate statutory and commercial objectives of SCC, realise the greatest benefit for Southampton and be in the public interest, without prejudicing unfairly any of the other applicants.

We request an urgent hearing before the Southampton Licensing Committee to put forward this proposed solution for their consideration and to give all the applicants in the Large Casino Competition, whether in respect of the RPWD or the two alternative sites, the opportunity to raise any objection.

In short, our proposed solution is that the Southampton Licensing Committee exercises its discretion to entertain late applications by all of the RPWD applicants, (or indeed the applicants for the other sites if they so wish), which would enable the applicants to apply for a large casino premises licence for wherever the casino is finally to be located, provided it remains within the same development.

We request the opportunity to present full arguments at the hearing before the Committee. For present purposes, so that SCC may consider whether to hold such a hearing, we outline our key submissions as follows:-

1. Pursuant to Regulation 7(2) of the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licence) Regulations 2008, the licensing

authority "are not required to consider an application that is made after the closing date". This language contrasts starkly with the wording of Regulation 7(1) which states that the licensing authority "may not consider an application that is made before the closing date". We submit that the licensing authority does therefore plainly have a discretion to consider a late application on the part of the RPWD applicants. Further, there is no limit on this discretion which would prevent its exercise during Stage 2 of the process.

2. We submit that this discretion should be exercised on the basis that it was the clear, and well understood by SCC, intention of all of the RPWD applicants to apply for a provisional statement for a casino to be located anywhere within the RPWD. That intention was made clear on behalf of our client, both in our letter to SCC of 2 June 2014 and at the Stage 1 hearing itself. Our letter of 2 June 2014, was a bona fide attempt by our client, on behalf of all applicants, to avert the very situation in which the applicants and the SCC now find themselves. We attach a copy of the letter for ease of reference, but specifically draw your attention to the following extracts:-

*"..... we believe it is highly unlikely that any of the applicants will be able to identify with precision and certainty where within the development the casino premises will ultimately be built. The final location of the casino may vary depending upon a significant number of imponderables such as construction issues, planning permission, commercial negotiations with anchor tenants and possible staging of the overall development. This gives rise to the practical difficulty for applicants in relation to Royal Pier (and quite possibly for applicants in relation to other Southampton sites) as to how to delineate the casino premises on the plan accompanying the application".*

*"..... the legal uncertainty does present applicants in Southampton with a dilemma in preparing their applications. Specifically, applicants are faced with the choice of either red-lining the premises where they presently expect the casino at Royal Pier to be located on the basis of the best information available from the developers or red-lining the entire development, both of which carry a degree of legal risk (for applicants and council alike)..... as the premises are likely to vary between provisional statement and premises licence".*

*"We would very much welcome guidance from Southampton Council on this legal issue as soon as possible so as to enable our client and other potential applicants to prepare their plans accordingly. Otherwise, the danger is that different applicants will take different approaches and the issue will be highlighted at the Stage 1 licence hearings when, in our experience, some*

*applicants are keen to take every possible legal point against their competitors”.*

As a result of our letter, on 20 June 2014, SCC issued guidance, on the advice of Mr Kolvin, that it would “accept Stage 1 applications that show a redline around the whole of the proposed development and encourage applicants to make this as comprehensive as possible within the constraints that this situation creates”.

We must acknowledge that it was for the applicants, not SCC, to make applications which complied with the relevant gambling legislation. It is clear, however, that SCC’s guidance served only to create confusion, as evidenced by the fact that all five of the applicants for the RPWD presented their applications in different ways. It may be that timing was a contributing factor, given that the guidance was issued quite late in the day and with little opportunity for the developer and RPWD applicants to co-ordinate their approach. We mention this only by way of explanation, not justification.

There is no doubt however that at the Stage 1 hearings all of the RPWD applicants were applying for a provisional statement for a casino to be located anywhere within the RPWD. We would ask the Southampton Licensing Committee to review its contemporaneous notes of the hearings. In respect of our client, specifically, it was made abundantly clear that the plans were prepared on the basis of the SCC’s guidance, hence the redline around the whole of the RPWD, but to assist the Licensing Committee our client had in addition indicated the area where it had been advised by the developer the casino was to be located. We believe that the Members of the Licensing Committee would be surprised to now be told that any of the applications did not relate to the entire RPWD site.

3. The RPWD is not scheduled for completion until 2019. We submit that there is therefore no prejudice to SCC or any of the applicants in the Large Casino Competition by reason only of the inevitable delay, of perhaps a few months, which would be caused to the Competition by the submission of further Stage 1 applications.
4. We submit there is clear and substantial benefit to SCC in allowing all five RPWD applicants to progress to Stage 2 in relation to the new proposed casino location, thereby re-establishing a competitive tension in relation to the RPWD, SCC’s preferred site for the casino. This will, we submit, result in great benefit to Southampton, which is the main purpose of the competition process. This is regardless of whether a RPWD site is eventually chosen as the winner or not. We submit that any Stage 2 applications submitted in respect of alternative sites are highly likely to contain greater benefits for Southampton if those bids are made in the knowledge that they are in competition with bids relating to the RPWD.

5. We submit that if the Licensing Committee were to entertain these late applications, it would not result in an unfair competition and/or any prejudice to applicants in relation to other sites, other than that they are less likely to win if there are five competing applications at the Royal Pier site. We do not believe this is a legitimate factor for the Licensing Committee to take into consideration, given the clear statutory objective of the Casino Competition process to generate the greatest benefit to Southampton. Further, any prejudice must be balanced against the severe and unfair prejudice to the applicants for the RPWD site who will be eliminated from the competition because the casino location has moved within the same development due to circumstances beyond their control, and notwithstanding that they made clear at the Stage 1 hearings that the applications related to the entire site.
6. We consider that the clear intention of the applicants to apply for a provisional statement for a casino to be located anywhere within the RPWD would provide a sound basis for the Southampton Licensing Committee to allow late applications by successful Stage 1 applicants, without opening the Large Casino Competition to fresh applicants. We understand this was a potential concern expressed by GGV at the hearing of the Licensing Committee on 16 December 2014. We are expressly not proposing that SCC re-start its Large Casino Competition; simply that it provides a fair opportunity for the existing applicants to submit applications, in a format acceptable to SCC's legal advisors, which incorporate a degree of flexibility in relation to the final location of the casino within the development. This was the intention of the RPWD applicants, as clearly understood by SCC, from the very outset of this process.
7. We were not in attendance at the hearing of the Southampton Licensing Committee on 16 December 2014. However, the change of location for a proposed casino at the RPWD was not known at the time of that hearing and the legal ramifications were not therefore considered. We submit that was a hearing relating to timing and the possibility of delay and prejudice, whereas the proposed hearing relates to a fundamental legal issue impacting upon our client's very ability to make a Stage 2 application at all.

We look forward to hearing from you.

Yours faithfully



**Harris Hagan**

Copy to: Richard Ivory, Head of Legal and Democratic Services  
(Richard.Ivory@southampton.gov.uk)

Martin Grout, Locum Licensing Officer  
([Martin.Grout@southampton.gov.uk](mailto:Martin.Grout@southampton.gov.uk))