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Your ref 2014/02562/70SLCP

31 March 2015

Dear Sirs

Large Casino Competition

Please note that we represent the interests of Grosvenor Casinos Limited (“Grosvenor”) of Statesman House, Stafferton Way, Maidenhead, SL6 1AY. We have been provided with all of the relevant documentation and correspondence in relation to the issues to be aired at a licensing committee hearing on 9 April 2015 at 11am. We can confirm that Anna Mathias from this office will attend that hearing and represent Grosvenor, along with the relevant company representatives.

We should be grateful if you would take this letter as setting out our written submissions on the three issues outlined in your letter of 21 March 2015. We will amplify these outline submissions at the committee hearing and will be happy to help the Councillors with any additional information they may need.

We can confirm we will cooperate with other applicants so that a “composite authorities bundle” can be prepared and lodged by 2 April 2015.

We have had the opportunity to consider the letter sent by Clifton Davies Consultancy to Mr Nayak of RPW (Southampton) Limited and also the letter sent in response by the Council to Mr Nayak, which contains the broad principles of the Council’s position having been advised by Philip Kolvin QC.

We have also had sight of Harris Hagan’s letter dated 2 June 2014 headed “Southampton Large Casino Competition - Legal Issue - Delineation of “Premises” on plan accompanying Application” and their letter of 16 March 2015 entitled “Southampton Large Casino Competition Royal Pier Waterfront Development - Legal Issue relating to Delineation of “Premises” in stage 1 applications Proposed Solution”.

We can confirm that we have also considered the primary legislation along with the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 and the DCMS “Code of Practice - Determinations under paragraphs 4 and 5 of schedule 9 to the Gambling Act 2005 relating to large and small casinos”.

In addition we represented one of the stage two bidders in the Leeds competition for a large casino licence and are aware of the circumstances in which Leeds City Council engaged its discretion to consider late applications for provisional statements, granting the same for London Clubs International and refusing to grant an application by Global Gaming Ventures, then represented by Harris Hagan.

Directors: Patrick M Whur • Andrew J Woods • Consultant: Colin Manchester

1. In the case of each of the applicants, may they show their proposed casino on any or all of plots WQ2, WQ3 or WQ4 at Stage 2 of the Casino Licence Competition?

Having taken into consideration the authority's provisional view as per the letter to Mr Nayak, our clients form the view that the Council's position would be to adopt the strictest of interpretations, were the application by our clients to be excluded from plots WQ2, WQ3 or WQ4. Our clients note that five applications were lodged in the Royal Pier redevelopment scheme, by:-

- (i) Aspers;
- (ii) Genting;
- (iii) GGV;
- (iv) Grosvenor; and
- (v) Kymeira.

Prior to the applications being lodged, the very real issue as to descriptions of the application site that would comply with the legislation was raised ably in Harris Hagan's letter dated 2 June 2014. In that letter, the legal uncertainty surrounding descriptions which would adequately identify the application site was highlighted to the Licensing Authority. In addition it should be noted that even though guidance was issued by the Authority on 20 June 2014, each of the five applicants interpreted that advice note differently – resulting in a different approach in the way that they described their application in both the description on the application form and the plan attached to the application. This highlights the difficult position that all potential bidders were in when they tried to describe their application site in such a way as to be compliant with the legislation but also so as to give flexibility within such a large mixed-use development scheme. It is hard to believe that statute was intended to be so strictly interpreted in an environment where multiple applicants were negotiating with, and in the hands of, a developer, as to the final position of a casino within a development, part of which is to take place on reclaimed land currently consisting of part of a river.

It is clear that the developer has, subsequent to the grant of the five provisional statements for this scheme, now reconfigured the layout as the development has evolved, and is seeking to place the casino in a different location within this significant scheme.

The Council set out its position at page 9 of the Nayak letter as follows:- “as a matter of legal and common sense, the boundary has to be fixed at some point, and in the view of the council it is fixed at stage 1, when a provisional decision is made to grant an application which has been subject to a process of public consultation.” At page 10 this is further highlighted when the Council states that “the purpose of the expression is to ensure that where a provisional statement has been granted, the premises licence application which follows is one in respect of which the regulatory and benefits questions have been asked and answered.” Finally the Council states at page 12: “all of these considerations, in the Council's view, lead clearly and inevitably to the same conclusion. 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. The purpose of stage 2 is to assess the respective benefits of the schemes for which such provisional decisions have been made, and not to permit behind closed doors amendments or prospective amendments to those schemes, outside the gaze, knowledge or participation of other stakeholders in the process.”

It is the view of our clients that the overriding position under the Act, Regulations and DCMS Code of Practice is that the process should lead to the issue of a final grant which delivers the greatest of

benefit to the Licensing Authority's area. This must be achieved in a manner which is fair, the same for all applicants and transparent.

Whilst the Authority's position, as set out in the Nayak letter, is strict in its interpretation, we would point to the current state of affairs, namely that all five of the original applicants are caught by the decision of the developer to move the physical position of the casino within the large development. We would suggest on behalf of our clients that the regulatory test would not be infringed by an identical casino offer in a different part of this significant scheme. It was always stressed in pre-application correspondence/discussion and during the stage 1 application and hearings that there was a need for flexibility in the final location of the Casino. Critically, its size/content/layout would not be significantly different if the amended location were to be allowed. It is hard in those circumstances to accept that anyone would be disaffected or prejudiced if the requested changes to the position of the Casino were allowed.

2. Does the Council have a discretion to accept new applications following the completion of stage 1 and, as is the case here, the commencement of stage 2 of the competition?

On behalf of our clients we take the view that the Council does have a discretion to accept new applications following the completion of stage 1, and after the commencement of stage 2 of the competition.

Regulation 7(2) of the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 provides that Licensing Authorities "are not required to consider an application made after the closing date." By its very wording the Regulation does not prohibit the consideration of such an application and this clearly gives the Licensing Authority the discretion to consider an application made after the closing date. This Regulation is drafted in direct contrast to Regulation 7(1), which states that the Licensing Authority "may not consider an application before the closing date."

There is nothing in the Statutory Instrument which would preclude the Authority from exercising its discretion to consider new applications following the completion of stage 1. We would invite the Authority therefore to exercise its discretion in favour of considering new applications. Clearly the Authority in making its decision should consider the public interest and regulatory risk to the casino process. The discretion is an absolute discretion and is not limited to any stage of the bidding process.

Having had regard to sections 3.1 and 3.2 of the approved Code of Practice issued by the DCMS, we would submit that this would be a fair outcome, bearing in mind the developer having moved the area in which the proposed casino can be situated. The potential implication of considering an application after the closing date is that, in order to be fair to all applicants, the Council would have to accept any late applications from those parties who have already expressed their intention by having had a stage 1 application considered and granted. There would be no need to recommence the whole of stage 1 and consider brand new applications. If the Council has formed the view that its assessment needs to be completed at the "regulatory test stage of stage 1" this would be a fair, transparent and open solution to this problem. This would in effect cause stage 2 to be suspended pending the outcome of any new stage 1 applications and the time given over for appeal against the outcome of any of those applications. Because of the nature of the fresh applications to be made, we would submit that the overall benefit to the casino competition process would outweigh the modest delay at this stage.

We would suggest that the timing of this is an important factor to bear in mind in the Authority's decision making process.

Leeds provides an interesting comparison. There, London Clubs International had made an application at stage 1 for a premises licence. After stage 1 had been completed, but before stage 2 had commenced,

London Clubs International realised that they had no authorisation to apply for a premises licence (not possessing the correct operating licence) and therefore lodged a subsequent provisional statement application outwith the stage 1 prescribed notice period. The Authority determined to exercise its discretion to allow a late application. The notice provisions were complied with. There were no objections to the application and the provisional statement was granted at stage 1. The stage 2 process was suspended pending consideration of the provisional statement and time given for any appeal. This is a good example of an Authority using its discretion for the greater good of the bidding process.

At a much later stage, Global Gaming Ventures submitted an additional provisional statement application and sought to persuade the Authority to use its discretion to allow a late application. This application was some eleven months into the stage 2 process and only a very short time before the Authority was to determine the best bid. At that stage the five original bids had been reduced to two.

The Licensing Authority considered this late application and determined that its discretion under Regulation 7(2) had to be seen and exercised against a background and context of the overall legislative provisions. In its decision it stated: "at some point the public interest requires a decision to be made and benefits delivered which outweighs the public interest in allowing new, better further or enhanced applications which might potentially enhance the offer. The judgement of the committee, at this time (eleven months into stage 2) and at this stage in the process [is] that point has been reached." To this effect the authority determined that although they had a discretion, which they had exercised in favour of LCI, they would not exercise it at this stage in the proceedings in favour of Global Gaming Ventures.

When judging the current situation in Southampton against the same statutory and benefit of the public tests, we would submit on behalf of our clients that this position has not been reached, and that late applications should therefore be considered. For all the reasons set out above, and below in answer to question 3, we submit that it is in the greater public interest to allow new applications by applicants with stage 1 provisional statements who have had the position of the casino demise altered by a developer.

3. If so, should the Council exercise its discretion to accept such applications?

We respectfully submit that it would be in the interests of the public for the Authority to exercise its discretion to allow new applications for the following reasons:-

- (i) There is a clear public interest in having an effective process which delivers the greatest benefit to Southampton. Any delay as a result of permitting new stage 1 applications is outweighed by the greater benefit to the public good, particularly at this stage of the overall process, when any delay would be minimal, given the anticipated development timescales envisaged for each of the sites. It is hard to believe that there would or could be any real or substantial opposition to relicensing the original provisional statements in a different part of the overall scheme.
- (ii) At some point the public interest requires a decision to be made and benefits delivered which outweighs the public interest in allowing new, better further or enhanced applications which might potentially enhance the offer. This stage has not been reached in Southampton as we are still ahead of the current stage 2 bid deadline. We would suggest that, to use the Leeds example, Southampton is much closer to the "LCI situation" than the "GGV situation" and should therefore use its positive discretion for the best benefit of the overall bidding process.
- (iii) It was always clear and understood by Southampton City Council that all five applicants were applying for a provisional statement for a casino to be located anywhere within the Royal Pier Waterfront Development. The fact that the developer has chosen a different position within the

overall scheme for the casino to be situated should not deprive the original applicants of the flexibility to have their stage 2 applications considered in the amended position.

- (iv) Southampton City Council should exercise its discretion as it would not result in an unfair competition and/or prejudice to applicants in relation to other sites. There would, by contrast, be prejudice suffered by the applicants in the Royal Pier Waterfront Development site if they are eliminated from stage 2 of the process due to circumstances beyond their control. This is made worse by the fact that all those applicants made it clear at the stage 1 hearings that their application related to the whole site. It is hard to believe that allowing those who have successfully navigated the stage 1 process to practically “substitute” their provisional statement for one in a different location within the same scheme would generate any unfairness or risk to regulation.
- (v) In its letter of 26th February 2015, Southampton Council referred to concerns about late changes at Stage 2 being made “behind closed doors”. We do not believe this would be the case if discretion were now used to permit late stage 1 applications. Indeed, any members of the public and other interested parties would then have every opportunity to make representations if they had any new and specific concerns about the revised location (although we understand very few such concerns have been expressed during the process to date).
- (vi) Southampton City Council should provide a fair and equal opportunity for existing applicants to submit applications in a format which would be acceptable to the council. This should be undertaken in such a way as to give flexibility as to the final location of the casino, even if the proposed location were to be required to move again in the future within the same development, given the anticipated development timeframe. This was always the intention of all applicants in the scheme and this was expressed in pre-application correspondence and meetings and throughout the stage 1 process. It would be against the public interest for the competition at Stage 2 to be artificially reduced at this stage.

We would reserve the right to raise further submissions at the hearing to determine this issue.

Yours faithfully

A solid black rectangular box used to redact the signature of Woods Whur.

Woods Whur