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**SOUTHAMPTON CITY COUNCIL**  
**LICENSING COMMITTEE**

**MINUTES OF THE MEETING HELD ON 25 OCTOBER 2019**

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**Present:** Councillors G Galton, Kataria, McEwing, Noon, Prior and Renyard

**Apologies:** Councillors Mrs Blatchford, B Harris, Spicer and Streets

**COUNCILLOR MCEWING IN THE CHAIR**

8. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

**RESOLVED** that the minutes of the meeting held on 24 July 2019 be approved and signed as a correct record.

9. **EXCLUSION OF THE PRESS AND PUBLIC - LEGAL ADVICE**

**RESOLVED** that the Sub-Committee move into private session in order to receive legal advice when determining issues. The parties to the hearing, press and the public, unless otherwise excluded by Category 4 of paragraph 10.4 of the Council's Access to Information Procedure Rules, would be invited to return immediately following that private session at which time the matter would be determined and the decision of the Sub-Committee announced.

10. **APPLICATION TO EXTEND THE PERIOD OF A PROVISIONAL STATEMENT FOR A LARGE CASINO**

The Committee considered the report of the Service director, Transactions and Universal Services which detailed the application by Aspers Universal Limited to extend the period of a Provisional Statement for a large casino granted to them under the Gambling Act 2005.

James Andrew, Francesca Bennet and Martin Heslop QC, representing Aspers Universal Limited; Andy Granwell and Dishy Umfleet, representing Old Town Residents Association; Kay Labon, representing Old Town Community Forum; Irene MacWilliam, representing Friends of Town Quay Park, and Graham Linecar, representing Southampton Commons and Parks Protection Society; were present and with the consent of the Chair addressed the Committee.

The Committee heard an application by Aspers Universal Limited to extend the period of a provisional statement granted in respect of Royal Pier Waterfront Development, Mayflower Park, Southampton. The provisional statement was granted for a period of three years on 22 March 2016.

The Aspers proposal was one part of what the Committee in its decision described as an ambitious and exciting one for Southampton. It considered that the proposed casino and the scheme were apt for the site, attractive, thoroughly presented and justified, backed by credible participants and supported by a sufficient record of progression to enable the Committee to make a judgment about its likelihood of fruition. On that occasion, the Committee also had the benefit of an Advisory Panel which included experts on the casino industry specifically and wider regeneration initiatives more

generally. It concluded that the Aspers proposal was likely to result in the greatest benefit to Southampton of all the schemes presented to it.

At the time of grant, the Committee determined that in accordance with Schedule 9 paragraph 10(3) of the Gambling Act 2005, the period of the provisional statement would be three years. It stated that it expected Aspers to have applied for a premises licence for the proposal within that period. It also noted that Aspers was entitled to apply for an extension of the period, which would enable it to explain the progress of the scheme. It noted that this would enable the licensing authority to retain some control over the pace and timing of delivery.

In the event, no significant progress has been made towards delivery of the scheme.

### **The application**

In its application dated 27 March 2019 for an extension of the period for a provisional statement, Aspers explained that the lack of progress of the wider scheme, and therefore its casino within the scheme, was due to circumstances beyond its control. Specifically, the construction of the casino was wholly dependent upon the reclamation from the sea of the land upon which it would be built, and that work had not yet commenced. It had stressed that it was as committed as ever to the venture. It requested an extension of three years to the provisional statement.

Aspers provided further detail in its letter of 7<sup>th</sup> May 2019. It explained that the developer, RPW (Southampton) Limited undertook some limited activity in 2016, securing planning permission for the relocation of the Red Funnel terminal and agreeing a masterplan for the overall Royal Pier development scheme, which it believed had the support of the stakeholders. However, there was pressure on feasibility due to the infrastructure costs associated with land reclamation. Furthermore, in 2017 the financial backers of the developer ran into financial difficulties, which effectively meant that no further progress had been made, despite abortive efforts by the backers to find alternative funders for the scheme.

Aspers referred to the “obvious commercial opportunity presented by the Royal Pier scheme”.

Aspers frankly accepted that it could not say what the position would be at the end of a further period of extension. However, it hoped that either the existing developer or a new party would get to a position where the scheme had the credibility to succeed, with a planning consent capable of implementation.

Following advertisement of the application, the Council had received three representations.

### **Representations**

Genting Casinos UK Limited, which was a rival applicant for the large casino licence, stated that it had no objection to the application. It did, however, submit that if the Council wished to award a new provisional statement or premises licence, it should restart the casino competition process and invite new competing applications to be made.

Ros Cassy, who was the convener of the Old Town Community Forum, objected to the extension by an email dated 13<sup>th</sup> September 2019. She stated, first, that it would be wrong to extend the provisional statement since it was part of a scheme which was not proceeding. Second, she stated that due to the increase in the density of the local population, there was a further premium on green space, which altered the balance between economic regeneration and preservation of green space. Third, she was concerned about the environmental impact of people leaving the casino late at night, particularly in an era of reduced public services including the police. In a supplemental email dated 19<sup>th</sup> September 2019, Ros Cassy stated that Members of the Forum were also opposed to the development on the ground that there was now increased information regarding problem gambling and its harmful effects.

Graham Linecar, the Secretary of Southampton Commons and Parks Protection Society (“SCAPPS”) objected to the extension by an email dated 13<sup>th</sup> September 2019. SCAPP’s principal concern was the unsuitability of a gambling establishment next to a public park and children’s play area. He stated that there was evidently no chance of the scheme proceeding in any event. He was concerned that a smaller scheme may be brought forward, both because of the uncertainty this would create as to the future of the park in the meantime and the likelihood that in any such scheme Aspers would bring their proposal further inland from its current position in the derelict pier, so further threatening the parkland and imposing an unwanted juxtaposition between the casino and children’s play space.

### **The hearing**

The Committee heard from Mr Martin Heslop QC on behalf of Aspers.

He stressed there were no objections from relevant authorities or the rival applicants for the large casino licence.

He stated it was entirely a matter for the discretion for the Committee whether the application was granted or refused.

He referred to the power to grant an extension in Schedule 9 paragraph 10(4) of the Gambling Act 2005, which gave a broad and unfettered discretion to grant, subject to the provisions of the Act, but should act fairly, openly and with regard to the licensing objectives and the legitimate representations made.

He emphasised that in granting the provisional statement the Committee had been impressed with the scheme and Aspers’ track record of delivery. It had considered that the scheme was head and shoulders above those of the other competitors.

He stated that the failure to progress the scheme had been wholly outside the control of Aspers and was dependent on the reclamation of the land on which the casino would sit, which had not yet started. However, Aspers remained totally committed to the scheme, hence the necessity for this application.

He stated that it would not be true to say that Aspers had done nothing. Aspers remained anxious to proceed with the scheme and had done all it could. It had maintained regulator contact with the developer and the financiers of the development. It had made clear to them Aspers remained ready to start as soon as the land was

ready. It had invested a great deal of time, finance and resources to achieve that aim. Representatives had been to Southampton and met with developers and financiers on a regular basis, making it clear it wished to see the scheme proceed as soon as possible. Not having any contractual relationship with the developers, it was in no position to require them to proceed. It had maintained close contact with the council and the stakeholders, as had its property consultants. There was little more that Aspers could do or could have done. It had not sat back. And, when given the opportunity, Aspers delivered.

Mr Heslop then addressed the benefit of granting the extension. He stated that it was understood that the Council was looking for an alternative developer. If so, the existence of the provisional statement would act as a catalyst for attracting a new developer. The Committee had accepted in 2016 that the presence of Aspers would help to drive the scheme. The same applied now.

He stated that the Committee had contemplated in 2016 that there may be an extension application, recognising that a situation such as this may arise and that Aspers may come before the Committee to explain the state of progress which it had done.

The situation was not of Aspers' making. It had done everything it could. It had a track record of delivery of schemes.

Further, refusing the application creates the spectre of a further application which he said was in no-one's interests.

In dealing with the representations, he said that the Committee was confined to the licensing objectives and could not be dealt with on moral or planning grounds.

Dealing with SCAPPS' objection, he pointed out that the site of the development could not be moved, since the provisional statement applied to this particular site. If there is no development, then there cannot be any harm as suggested by SCAPPS.

Addressing Ros Cassy's objection, he said that if the Council wished to continue the scheme for the benefit of the city, which he understood it did, it would need to seek a new developer, and the existence of a provisional statement and a well-regarded anchor tenant would make the proposal more attractive to a prospective developer.

In summary, he asked what the Committee had to lose by granting the application, but said it had a great deal to gain. If there was no new developer, the provisional statement would lapse. If the Council wished to find an alternative developer, there was clear benefit in prolonging the provisional statement. To refuse the extension would be undesirable because it would involve restarting the whole process.

The Committee asked Aspers whether it had made investigations as to any changes in the area. Aspers stated that there had been a planning application on the site which had been withdrawn. It was too early for a new feasibility study, although there had been development around the site, including residential development.

The Committee asked who would pay for reclamation costs and who would deal with Crown Estates. Aspers stated the developer was supposed to reclaim the land. Aspers also accepted that the provisional statement was for this particular site. Aspers

could not move the site. If a new site came forward Aspers would work to ensure the casino could be developed in its existing location.

The Committee asked whether if an extension was granted it may be faced with a further application later. Aspers stated that it had spent a lot of time and money winning the provisional statement and remained committed to the site. There had been an application to relocate the Red Funnel ferry and much work had been done on the ecological impacts of land reclamation. So it would not be necessary to start all over again.

The Committee asked whether the benefits would be the same given the changes in the area. Aspers said that the scheme brought in additional benefit, and simply added to the development in the area. It could not say exactly what an alternative scheme would be, but would likely comprise the same elements.

The Committee also asked whether the casino might deter some developers. Aspers stated that it could not say, but it was important that there was an anchor tenant with the desire to enter a long lease.

The Committee asked whether Aspers had taken into account the changing nature of gambling as a whole, whether it would help to support other elements making the scheme as a whole more attractive, and child safeguarding. In answer, it was said that the Aspers operation had not changed. Aspers had a mixed offer, not just gaming and protection of the vulnerable was at the forefront of Aspers' business. It did better in locations where there was a broad offer, e.g. Stratford, London.

On behalf of the Old Town Community Forum it was asked what evidence there was that an extension would make it more likely that the development would proceed in the current economic climate. Aspers accepted that there was no evidence. Aspers was an operator not a developer. There was no current feasibility study. It was also asked whether a scheme would come forward in the next three years. Aspers said if the process moved forward, it was hoped that the scheme would be delivered. It accepted it was unlikely that the reclaiming would happen in the next 3 years.

The Old Town Community Forum further asked whether there would be public health impacts of the scheme in terms of air pollution and NHS costs. The reply was that the Committee had assessed the benefit in 2016 and had decided that it would be beneficial. It was also suggested that public health benefits were irrelevant and that the Committee had made an assessment in 2016. Legal advice was taken and advice was given that the Committee was entitled to take account and make a current day assessment of any benefits or disbenefits in deciding whether to extend the provisional statement. Aspers therefore added that it had established Community Action for Responsible Gaming groups in all cities in which it operated, focussing on responsible gambling in partnership with the community. Aspers could not say whether it had supported the reduction in maximum stake for Category B2 machines from £100 to £2. It could not say what contributions it made to national research, education and training, but through the Schedule 9 agreement it was required to make financial contributions to the community. It also worked with the Gambling Commission. It was asked whether casino workers suffered health problems, e.g. through smoking, and it was said that Aspers had good policies and procedures for employees. The Forum finally asked whether it was aware of any recent research into the impact of casinos on local

communities. Aspers said it did not have an Aspers officer there and so could not answer.

Mr Linecar asked how feasible was it that an alternative scheme would leave the casino where it was. Aspers said that a new scheme would need significant reclamation in any case and that the casino could be left in its current proposed position. It was accepted that the provisional statement was for this particular site and that it could not be moved.

### **Old Town Community Forum**

The Forum representatives said that the Old Town was a residential area but the demographic was changing and there were more young families, which raised questions of vulnerability. There was increasing use of the park. This was not a resort area. It was a neighbourhood with the character of a village. There was no benefit to the local area from the casino. There might be benefit to the area as a whole but not locally. The area was already polluted due to the highway and the casino would bring more. The police were overstretched and this would attract further late night crime. It was wrong to extend the provisional statement when the underlying scheme had not progressed.

The Forum representatives added that access to green space had a positive effect on the health of the community. Recent research had reinforced this. The loss of green space was damaging to welfare and imposed costs on the NHS. Therefore, the preservation of green space was economically beneficial. The casino threatened these public health and economic benefits. It also increased the risk of problem gambling, and a significant proportion of casino players were problem gamblers. Research also showed that proximity to casinos increased problem gambling, and that the proximity of the residential population was therefore of concern. A resort casino should not therefore be placed next to a residential community, and that its location would impose a cost on local services. Further, Mayflower Park was used to a large extent by lower income, disadvantaged groups, including children. Further, the city centre population had doubled in the last 10 years. The scheme normalised gambling as a pastime, the costs of which were borne by the City. This was an opportunity for the Council to reconsider the matter in line with its green and health strategies and its aspirations to be a city of culture.

The Forum referred to Aspers' question what was there to lose by extending the provisional statement. It was said three years ago that the casino would remain a catalyst. It was still said that it would be a catalyst. In the meantime, the park remains in a poor unloved state. To grant the extension means that the park would remain unloved and uncertainty would continue.

### **Southampton Commons and Parks Protection Society ("SCAPPS")**

Mr Linecar said that Mayflower was the only city centre green space on the waterfront. It was popular with city visitors. SCAPPS had and continues to have a concern that a gambling establishment should not be located next to a public park. In 2016, the casino was to be sited within a large development including a replacement park, on reclaimed land. When the Royal Pier Waterfront planning application was submitted, SCAPPS objected. The replacement park, it said, was a poor substitute, being above an underground car park, surrounded by bulky and high buildings. SCAPPS expressed

concern regarding the uncertainty of what would come forward. Mr Linecar's understanding was that the planning application was still extant, but it was clear there was no permission, and the Council had announced its withdrawal from the partnership with the developer. Aspers had a hope but no evidence that a new scheme and developer would come forward. We could not know the content of the notional scheme, what mix of uses, whether it would be the same area, or what would happen with Mayflower Park. It was highly likely it would affect the park. SCAPPS could not foresee any condition which would safeguard against juxtaposition of major gaming establishment with play area used by children.

### **Closing submissions**

The objectors did not wish to make closing submissions.

In closing Aspers said that the existence of the scheme as an anchor helped to catalyse the scheme. Many of the objections made had either been dealt with in 2016, or were planning matters and did not fall for consideration by this Committee.

### **Legal advice**

The Committee received legal advice as follows:

- (1) If the provisional statement was extended, the current site for the casino may not be moved under this provisional statement. If a new developer came forward with a different scheme, it would not be bound to build out the development as presented in 2016, but it would be bound to leave the casino in precisely the same place.
- (2) If the provisional statement was not extended, the Council was entitled but not bound to run a new competition, at which point anybody could make a proposal anywhere in the city.
- (3) The Gambling Act 2005 does not set out criteria for the grant or refusal of extensions of provisional statements. As such, the Committee has a discretion which it should exercise so as to further the purposes of the Act. These were both the promotion of the licensing objectives, which were the principal concern at Stage 1 of the casino competition process, and the benefit to the area of the authority, which was the principal concern at Stage 2. In determining the question of benefit, the Council's evaluation criteria and scoring matrix scored proposals out of 1,000, with 750 points going to regenerative impact (including physical regeneration, tourism, employment opportunities and financial contributions towards regeneration), 125 points went to the quality of proposals to address problem gambling, and 125 points went to other financial contributions. The Committee was entitled to bear in mind the hoped for benefits in determining this application.
- (4) The Committee's discretion therefore went beyond the licensing objectives, although this did not extend as far as moral grounds. Further, the likelihood of planning permission was a statutorily irrelevant consideration.
- (5) The Committee had been asked to take account of the potential benefits of extending the provisional statement in helping to attract a new developer to deliver the scheme. This was a relevant benefit, whose merits and weight fall for consideration.
- (6) Aspers had suggested that refusing the extension would create a disbenefit, namely the potential for a further competition; so that extending the provisional statement created a correlative benefit. Whether there was a further competition would be a

matter for the Council, and so whether the prospect of a further competition would be regarded as a potential benefit or a disbenefit was a matter for this Committee to weigh. (7) The Committee should also note and take into account the disbenefits alleged by the objectors to the application in terms of environmental impact, harm to the licensing objectives, and uncertainty in relation to the park. The merits and weights of those points were all matters for the Committee. None of these was, on analysis, a moral ground.

(8) The Committee was entitled to take account of the merits of the scheme as a whole. It was not bound by the criteria before it in 2016, or indeed the findings made in 2016. It could not take account of the likelihood of the scheme obtaining planning permission, but it could take account of matters which were also planning matters, as case law has conclusively established.

(9) The claimed impact on children was an impact on group with protected characteristics. Accordingly, section 149 of the Equality Act 2010 was in play. The substance of section 149 was set out in paragraph 18 of the report. The Committee should have specific regard to this claimed impact, and exercise its duties to have regard to the matters in section 149 with substance and rigour, albeit that the Public Sector Equality duty does not require any particular result.

(10) The site of the casino cannot legally be moved under this provisional statement, so that any concern that the period of extension would be used to resite the casino under this provisional statement was irrelevant.

(11) The Committee should also consider its duties under the Crime and Disorder Act 1998 and the Human Rights Act 1998 as set out in paragraphs 16 and 17 of the report.

(12) The Committee should consider the reasons given for delay in implementation of the scheme, the prospects of realisation of the scheme and the consequences of the grant or refusal of an extension.

(13) How the Committee weighs all of these factors, and any other relevant factors, was a matter of judgment for the Committee.

(14) Its options were to grant the extension for three years as asked, grant for a lesser period, or refuse the extension altogether.

All those present confirmed that they did not take issue with any of the legal advice.

## **Decision**

In making this decision, the Committee had taken account of all that it had heard and read, and had applied the legal advice which it had been given.

The Committee was aware that the Aspers proposal, and the wider scheme of which it forms part, was considered to be an excellent application when it was made, for the reasons set out in its decision in 2016.

The Committee had not heard sufficient evidence to reverse its previous view. It accepted that the scheme would result in at least some benefit to the area for the reasons previously given. While it accepted that there had been surrounding development over the last three years, it did not consider that there were fundamental differences in the surrounding area now as against three years ago.

Therefore, while the Committee was not bound by its decision in 2016 to grant this extension, it gave significant weight to its previous decision.

It acknowledged that all gambling establishments may be associated with problem gambling, but the Gambling Act provided safeguards against such problems, the Schedule 9 agreement provided for further commitments in relation to problem gambling, and Aspers themselves were a reputable operator. So far as children were concerned, the provisional statement required that gambling activities should not be visible from the exterior of the premises. Further, the Committee had no evidence that casinos posed a significant risk to crime and disorder in the area, or any risk to children. While the casino may have contributed to traffic pollution, this would be true of any development, whether it had a casino in it or not.

As to such negative impacts, the Committee was aware that there had been no objections to this application by any responsible authority or public health body.

Any proposed development, whether in the same or different form, would require planning permission, and at that stage a full assessment of impact would be made, including any impacts arising from the juxtaposition of the development with a park including a play space. On that point, the planning application would be determined on its own merits. The planning authority would not be bound by any determination made by this Committee.

Further, if a proposed developer no longer wished to have a casino, it would not be bound by this extension to incorporate the casino in the scheme.

The Committee noted that the development had not come forward and there was no current evidence of feasibility. However, as a matter of common sense it accepted that a consent for an anchor tenant which was ready and willing to proceed, such as a casino, would help to catalyse the development. On the other hand, if the development did not proceed, nothing was lost by the extension.

For those reasons, the Committee was, on this occasion, prepared to extend the provisional statement for a further period. It considered that the appropriate extension was three years, to maximise the possibility that this development would proceed. If it did not proceed and a further extension application was made, the decision today should not be cited as a reason why the further application should be granted.

**RESOLVED** that the Committee would extend the provisional statement for a further period of three years.