

M M I N U T E S M

meeting: **LICENSING SUB-COMMITTEE**

date: **29 APRIL 2013**

PRESENT:-

Councillors Dass, Claymore, and N Patten.

IN ATTENDANCE:-

N Gilchrist	-	Legal Counsel for Licensing Authority
L Banbury	-	Democratic Support Officer
S Hardwick	-	Senior Solicitor
J Till	-	Licensing Officer

Wolverhampton
City Council



**Gambling Act 2005 – Application for a Small Casino Licence
Rubicon Casino, 56-58 Temple Street and Premises formerly known
as ‘The Beach’, Temple Street, Wolverhampton (Appendix 26)**

Present

64.

For the Premises

P Kolvin - Legal Counsel
A Ballard - Director
P Atkins and
J Bourne - Sidney Mitchell Solicitors

For Dunstall Racecourse

N Arron - Solicitor

The Chair introduced all parties. He confirmed that there were no declarations of interest on behalf of the Sub-Committee Members. He advised, however, that P Kolvin had provided legal training in regard to the provisions of Gambling Act 2005 for Wolverhampton Councillors, but he had never spoken to the Sub-Committee about the application being considered today. N Arron accepted the explanation and indicated that he had no objection to the continuation of proceedings with the current participants.

The Chair introduced N Gilchrist, Legal Counsel, who had been asked to assist the Sub-Committee by providing legal advice and acting as clerk to the Sub-Committee. She advised that a request had been received from N Arron, on behalf of Dunstall Racecourse, to postpone this meeting. The Sub-Committee would, however, consider the following questions on issues of law:-

- Does the Sub-Committee have discretion to consider the application made by Casino 36 for a small casino premises licence under section 159 of the Gambling Act 2005, or to consider any application to vary, and
- if the Sub-Committee does have such a discretion, how should it be exercised, i.e. should the discretion be exercised in favour of proceeding to a hearing?

Should the Licensing Sub-Committee decide they can and will hear the application of Casino 36 following examination of material considerations, there is unlikely to be sufficient time to consider a substantive application on 29 April and in this instance it has been agreed that the matter be adjourned to a specific date. All arrangements for the proposed meeting on 30 April had therefore been cancelled.

The following documentation had been received by the Council on 26 April 2013, as supporting additional arguments for Dunstall Racecourse:-

- dcms Code of practice – Determinations under Paragraphs 4 and 5 of Schedule 9 to the Gambling Act 2005 relating to Large and Small Casinos;

- Wolverhampton City Council – Application pack in respect of Competition for Grant of Small Casino Licence or Provisional Statement;
- Section 159 and 294 of Gambling Act 2005;
- Gambling Act 2005 (Premises Licences and Provisional Statements Regulation 2007), and
- Case Law – Freddie Williams v Ayrshire Council + William Hill.

P Kolvin presented, on the day of this meeting, the following documentation in as additional supporting arguments for Casino 36:-

- Case Analysis – Regis Direct Ltd v Hakeem, and
- Insolvency Act 1986 c.45 – Creditor's Petition.

All parties agreed that the above mentioned documentation could be considered by the Sub-Committee in making their decision today.

At this juncture, Mr Arron outlined the objections on behalf of Dunstall Racecourse, and in so doing made the following comments:-

- Casino 36 had made a fatal error, which could not be overcome, in not meeting the requirements under Section 159(3) of Part 8 of the Gambling Act 2005, relating to the holding of an operating licence.
- Documentation sent to the Council on 26 April 2013 demonstrated the Gambling Commission's interpretation of the requirement under section 159.
- Section 159(5) provides that an application for a Casino Premises Licence may only be made by a person who has a right to occupy the premises to which the application relates
- Page 2, Section 4 of the Council's Application Pack indicated that an application for a Casino Premises Licence may only be made by a person who –
 1. holds a Casino Operating Licence or has made an application for such an Operating Licence which has not yet been determined, and
 2. has a right to occupy the premises to which the application relates

A copy of the lease had been produced which confirmed that Casino 36 met requirement 2.

- Casino 36 had failed to meet the mandatory requirements.
- He drew attention to the following items of case law included in the packs circulated to the Sub-Committee:-
 - Jeyanthan Ravichandran v Secretary of State for the Home Department
 - TC Projects Limited v Newcastle Justices
 - Padfield v Minister of Agriculture, Fisheries and Food
 - British Telecommunications Plc v Gloucester City Council
 - Nicholas Shaw Limited v Scarborough Council
- He accepted that amendments to applications were allowed but believed that the question, in this case, was whether an application

had actually been made. He believed the statute was clear and precise, was mandatory and did not allow for discretion.

At this juncture, Mr Kolvin presented his response as follows:-

- The legislation outlined by the objector was old; the High Court (Justice Gibb) had advised you should do what is just in all circumstances; the important issue was what should be done about an application which did not fully meet the requirements and that, if no harm had been done, the application should proceed. This had been the case since the implementation of the 2005 Act.
- The Act states that an applicant has to have applied for an operating licence before an application can be made and that a premises licence should not be granted until an operating licence was in place. At 31 October 2012, Casino 36 had an operating licence for their existing casino. As soon as it had been pointed out that they did not have an operating licence granted under the 2005 Act, the omission was rectified. The operating licence was granted on 14 March 2013 and issued on 5 April 2013. (Tab 8 of bundle given to Sub-Committee). He believed therefore that the intention of the Act had been fulfilled.
- He commented that the only objection, on these grounds, had been from a trade competitor for the premises licence.
- Wolverhampton City Council would lose out on the benefits which would arise from allowing the competition to proceed to stage 2.
- The Licensing Sub-Committee had the power to proceed as there had been substantial compliance on behalf of Casino 36. To proceed was the right thing to do as no one had been harmed.
- An application had clearly been made. The application had clearly been made, had been accepted and processed by the Licensing Authority and the matter had been advertised in the proper manner.
- He accepted that an application for the correct operating licence had not been made at the date the premises licence application had been made, but questioned what the consequences were in respect of the failure to comply;
- He made reference to the judgement of Lord Woolf in the Jeyanthan Ravichandran case and the rules regarding procedural irregularities. There was a need to seek what was just in all circumstances and the question asked as to whether substantial compliance had taken place.
- In the case of TC Projects, the purpose of the legislation had been substantially achieved.
- Section 153 of the Gambling Act 2005 provides that, in exercising its functions, a licensing authority should aim to permit;
- The Scottish case cited by Mr Arron was not binding in England, and
- He outlined the relevant provision from the case of Regis Direct Limited v Hakeem.

Mr Arron believed that the failure of Casino 36 to have an operating licence at the time of application rendered the application null and void. No application for amendment had been made. He added that the Scottish case illustrated the modern approach. He believed that the Sub-Committee had to decide whether Casino 36 had complied with the Section 159 requirements.

Mr Kolvin stated his belief that the benefits for Wolverhampton would not be best achieved by disallowing the application. He felt that the Sub-Committee should be mindful of the fact that no one else had objected on these grounds.

65. The Members of the Sub-Committee, Legal Counsel (M Gilchrist), City Council's Solicitor and Democratic Support Officer withdrew from the meeting room in order to make their decision. N Gilchrist summarised the competing arguments made by the parties that morning. The Sub-Committee made their decision, returned to the meeting and the barrister outlined the decision as follows:-

Having considered all of the arguments for both parties made in writing by way of skeleton argument or otherwise and orally before us today we find that we can proceed to hear the application for a casino premises licence submitted by Casino 36 and consider it a proper exercise of our discretion to do so.

Full written reasons will follow but in short:

1. In reaching this conclusion
 - a) We have considered the legislation, regulations and guidance referred to by Mr Arron together with the Scottish authority of *Freddie Williams Bookmaker v. East Ayrshire Licensing Board* and the written and oral arguments advanced by Mr Arron.
 - b) We have considered the legislation and authorities referred to by Mr Kolvin QC and the written and oral arguments advanced by him.
2. We consider that the fact that, as at 31 October 2012, the date the application was made, the applicant did not satisfy section 159(3) of the Gambling Act 2005 does not render the application an irreversible nullity such that we may not proceed to consider the application. We have taken in to account that section 159(3) is stated in mandatory language and have then considered what ought properly to be the consequences of failing to comply with the requirements of section 159(3) in the context of all the facts and circumstances of the case.
3. Having considered all the facts and circumstances of this particular case we conclude that it is just and proper to proceed to hear the application.

66. The Sub-Committee and all parties at the meeting agreed their availability on 13 May 2013 to proceed to hear the application. The Democratic Support Officer undertook to consult with the legal representative for the local Church which had made representations to the objections, prior to confirming the arrangements.

67. Mr Kolvin undertook to provide a written response to the skeleton argument submitted on behalf of the Church within seven days.