

## Bath & North East Somerset Council

MEETING:	Licensing Committee	
MEETING DATE:	5th October 2010	AGENDA ITEM NUMBER
TITLE:	Approval of an Application Pack for the Grant of a Premises Licence for a Small Casino in Bath and Appointment of Advisory Panel	
WARD:	ALL	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		
Annex A; Copy of responses received from the consultation exercise, including officer comments and recommendations.		
Annex B; Copy of a proposed Application Pack including the proposed changes from the consultation document.		

### 1 THE ISSUE

- 1.1 Bath and North East Somerset Council, as the Licensing Authority, have been granted permission to issue a premises licence for a small casino under The Gambling (Geographical Distribution of Casino Premises Licences) Order 2007. Council has resolved to take the necessary steps to issue the licence within its area, pursuant to those Regulations, Part 8 and Schedule 9 of the Gambling Act 2005 ("the Act") and The Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008. The latter Regulations require that the licensing authority must produce an application pack ("the pack") and stipulate what should be contained within it.
- 1.2 As authorised by Council, officers have produced a draft pack for prospective applicants. The purpose of this pack is to inform applicants of the rules and procedures applicable to the application process. The pack will be published to conform to the requirements set by Parliament, and the Secretary of State, and to ensure an application process which is both transparent and fair. The Government has published a Code of Practice which provides a suggested procedure to be followed, by a licensing authority, in determining such applications.
- 1.3 Details of the proposed pack have been circulated for comment and the responses considered. Where necessary, changes have been made to the draft documents.
- 1.4 It is proposed that an Advisory Panel be appointed to assist the Committee on the competing bids and to enable it to arrive at a determination upon the application that is likely to offer the greatest benefit to the Council's area.

## **2 RECOMMENDATION**

The Licensing Committee is asked to agree that:

- 2.1 The Committee note the responses to the consultation exercise and agree that the officer recommendations should be incorporated into the revised pack.
- 2.2. The draft pack, provided in Annex B, is adopted.
- 2.3 Delegated authority is provided to the Divisional Director, Environmental Services, in consultation with the Chair of the Licensing Committee to appoint the members of the Advisory Panel.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 The cost of carrying out the consultation exercise and developing the application pack has been met from within existing budgets.

## **4 THE REPORT**

- 4.1 The Act created a new system of licensing and regulation for commercial gambling. Amongst other changes, it gave to local authorities new and extended responsibilities for licensing premises for gambling. In some cases (such as gaming machine arcades), those build on existing responsibilities. In other major areas, including betting, casino gaming and bingo, they transferred to local authorities responsibilities which previously lay with local licensing justices.
- 4.2 Certain functions under the Act are delegated to the Licensing Committee including the award of a premises licence for a small casino. In order to award the premises licence the Council must follow a two stage process. The first stage is a regulatory process under which the Council grants a provisional statement/premises licence to any applicant that meets the licensing objectives. An application for Stage 1 should be determined by the appropriate Licensing Sub-Committee. If more than one applicant meets the objectives, then they proceed to Stage 2 which is the competition stage.
- 4.3 An application for Stage 2 is determined by the full Licensing Committee. At Stage 2, the Committee must award the provisional statement/premises licence to the applicant whose application is likely to result in the greatest benefit to the area. The Council sets out, in its Statement of Principles (which is its policy with regard to exercising its functions under the Act) the principles that it will take into account in making an assessment of which application will result in the greatest benefit to its area. The detailed criteria in the pack have been produced by officers and have been included in a scoring matrix to assist in the analysis and evaluation of the bids.
- 4.4 A copy of the proposed pack has been circulated for comment and a revised copy, including suggested officer recommendations following the consultation, is provided in Annex B.
- 4.5 The Committee is being asked to consider the officer recommendations and agree to their inclusion in the revised pack.

4.6 Counsel has advised that the appointment of the Advisory Panel needs to be made by the Licensing Committee. It is recommended that the Committee delegate authority to the Divisional Director, Environmental Services, in consultation with the Chair of the Licensing Committee to appoint the panel.

## **5 RISK MANAGEMENT**

5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

## **6 EQUALITIES**

6.1 The equality groups have been included within the consultation exercise and the consultation was carried out in accordance with the equalities requirements for consultations.

## **7 CONSULTATION**

7.1 Chair of the Licensing Committee; Section 151 Finance Officer; Monitoring Officer.

7.2 The consultation on the proposed Application Pack has been carried out in accordance with the Council's consultation policy and has included all Councillors, the Police, PCT, local residents associations, local businesses, Gambling Commission and support agencies, B&NES services including Development Control and Child Protection, and various gambling agencies.

## **8 ISSUES TO CONSIDER IN REACHING THE DECISION**

8.1 Social Inclusion; Young People; Human Rights, Public Safety.

## **9 ADVICE SOUGHT**

9.1 The Council's Monitoring Officer (Council Solicitor) and Section 151 Officer (Strategic Director - Support Services) have had the opportunity to input to this report and have cleared it for publication.

<b>Contact person</b>	<p>Andrew Jones, Environmental Monitoring and Licensing Manager.</p> <p>Tel: 01225 477557</p>
<b>Background papers</b>	<p>The Gambling Act 2005</p> <p>The Gambling (Geographical Distribution of Casino Premises Licences) Order 2007</p> <p>The Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008</p> <p>Code of Practice - Determinations under Paragraphs 4 and 5 of Schedule 9 to the Gambling Act 2005 relating to Large and Small Casinos dated 26 February 2008</p> <p>Guidance to Licensing Authorities issued by the Gambling Commission dated May 2009.</p>
<p><b>Please contact the report author if you need to access this report in an alternative format</b></p>	

## 1. Letter from Federation of Bath Residents Association (FoBRA).

Dear Mr Jones,

Thank you for giving FoBRA an opportunity to comment on this proposal. I understand there will be other opportunities as well, later in the process, once any specific organizations emerge, with site(s) in which they propose to operate a casino; and that it will be possible to examine (and comment on) these proposals too, through the Planning Application procedure. I was present at the Council meeting on 1<sup>st</sup> Oct 09 when the intention to seek operators for a small casino in B&NES was approved so it is not a surprise to me that this proposal has appeared. The industry is highly regulated in UK, and several similar casinos already operate responsibly and (presumably) profitably in nearby Bristol. However, if a casino is proposed for Bath (which seems likely), our residents will want certain assurances, safeguards and associated benefits; and will need to know how the Council proposes to obtain them. Examples are:

- Support for gambling addiction support agencies such as GamCare (or local equivalents).
- Better control of antisocial behaviour at night (e.g. funding of Street Marshals, police, etc.,).
- Better street cleanliness.
- Subsidised late night transport.

*Robin Kerr*



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## OFFICER COMMENTS

The examples highlighted by FoBRA may be taken into account during the evaluation of the bids by the Council at stage 2 of the application process. It is right to say that local residents will not have the opportunity to comment on applications at Stage 2 of the licensing process, because the system does not allow for this; instead the Council is obliged to maintain the confidentiality of the Stage 2 bids. However, local residents will have an opportunity to participate in any planning process for the sites in question.

## 2. E-mail from Bath Police

Andrew,

I have looked through the Gambling information that you circulated there are no issues the Police wish to raise.

Martin Purchase, Avon and Somerset Licensing Bureau

## OFFICER COMMENTS

No comment

### 3. Letter from Joelson Wilson on behalf of Rank Group

Dear Sir,

RE: SMALL CASINO UNDER THE GAMBLING ACT 2005 ("GA 2005"), BATH AND NORTH EAST SOMERSET COUNCIL – APPLICATION PACK AND ACCOMPANYING DOCUMENTS

As you are aware, we act on behalf of Rank Group Plc ("Rank"). Further to Rank's response to the Council's Draft Statement of Licensing Principles, we welcome the opportunity, on behalf of Rank, to comment upon the Draft Application Pack and accompanying documents.

1. Applications for grant of a small casino premises licence – application pack

No Casino Resolution

We note that incorporated in paragraph 3, page 3 of the above document it is stated "if there is only one successful applicant, the licence ... will be awarded to that applicant unless the Council decides to terminate the process by adopting a no casino resolution". Rank suggests consistent wording ought to be adopted with the relevant wording under paragraph 4 "Stage 1 of the application process", page 6 and paragraph 20.18 of the proposed Statement of Principles which make it clear that a no casino resolution may only be adopted in circumstances where there is only one successful applicant at the conclusion of Stage 1 of the competition.

Rank's reason for this assertion arises from Schedule 9 to GA 2005. Paragraph 4 of Schedule 9 provides that, at the first stage of the bidding process, the Licensing Authority shall consider in respect of each application whether they would grant such an application under s.163 of GA 2005. Paragraph 5 of Schedule 9 then provides that if the Licensing Authority determines under paragraph 4 that they would grant a number of competing applications, then they shall determine which of those applications to grant (see paragraph 5(2) of Schedule 9) and in reaching that decision they shall determine which of the competing applications would, in their opinion, be likely, if granted, to result in the greatest benefit to the Authority's area (see paragraph 5(3) of Schedule 9). \_\_\_\_\_

It therefore follows that, if more than one bid is successful at Stage 1, the Licensing Authority is obliged to enter Stage 2 of the application process and is obliged to consider which of the competing applications would in their opinion be likely, if granted, to result in the greatest benefit to the Authority's area and to grant a licence accordingly. These requirements are mandatory. It appears to follow that, in these circumstances, a "no casino resolution" would be in conflict with the statutory provisions which are triggered by a "provisional" decision to grant more than one licence at Stage 1. By contrast, the power to pass a "no casino resolution" by virtue of s.166 of GA 2005 will only arise, once the application process has commenced, if only one bid emerges as successful at the end of Stage 1, since there is no mandatory requirement imposed by GA 2005 to grant a licence if there is only one successful applicant at Stage 1.

#### OFFICERS COMMENTS

Paragraph 20.18 in the current Statement of Principles states that a no casino resolution may be only be adopted in circumstances where there is only one applicant at the conclusion of Stage 1 of the competition. Therefore the Council is not bound to adopt a no casino resolution in these circumstances.

Furthermore, s.166 of the Gambling Act gives the Council wide discretion to adopt a no casino resolution at any time. The Council is therefore not obliged, where there is more than one successful bid at Stage 2 of the competition process, to determine which bid would provide the most benefit to the area. The requirements, in Schedule 9 of the Act, are not mandatory, given the provision in s.166.

### Hearing

Rank notes that the application pack provides for hearings to be held at Stage 1 of the application process. As stated in its response to consultation dated the 28 August 2009, Rank should be grateful for clarification in relation to the omission of any reference to hearings at Stage 2 of the process, particularly since it is envisaged that at Stage 2 conditions may be attached to any licence. This is made clear at paragraph 5 "Stage 2 of the application process" on page 7, when reference is made to the possibility of conditions being attached to give effect to the agreement entered into between the successful applicant and the Council to ensure delivery of benefits, but also at Part 2 "Plans", page 2 of the "Stage 2 Application Form – Notes for Guidance", where references are made to the possible imposition of conditions relating to provision of low or no stakes gambling and in relation to hours and regularity of overall entertainment etc. to include any proposals to avoid irresponsible alcohol consumption.

As referred to in Rank's letter of 28 August, SI Number 173 of 2007 ("the hearings regulations") applies to proceedings of the Licensing Committee in the exercise of its functions under GA 2005 and a hearing compliant with these regulations is required when the Licensing Authority intends to impose conditions on a licence under GA 2005 s.169. Rank would be grateful to receive clarification as to how it is proposed that appropriate and enforceable conditions will be identified and drafted to give effect to the agreement that will be entered into between the Authority and the applicant, and who, *inter alia*, will be responsible for identifying and drafting those conditions.

### OFFICERS COMMENTS

Neither the Act nor the Code of Practice contemplates a hearing at Stage 2. All matters contained in part 8 of the Act do not evidently apply to the Stage 2 procedure. If Part 8 did apply, which the Authority does not accept, then all those matters will be dealt with at Stage 1. A hearing will not be required to be held where the condition requiring compliance with the written agreement as this will have been offered by the applicant as part of its Stage 2 application. **To the extent necessary, the authority will invite the winning applicant to waive a hearing at Stage 2.**

#### Admission of new information when making representations about scoring

At paragraph 5 "Stage 2 of the application process", page 10, it is stated that the evaluation panel will supply a draft evaluation to the relevant applicant to enable the relevant applicant to correct factual errors or to make representations as to the scoring which has been applied. It is stated that at this stage no new information will be accepted. Rank believes that there may be circumstances in which it will be necessary to admit new information in order to support and justify representations made about scoring or evaluation. Provisions should be made for this in the procedure note, provided any new information admitted is of direct relevance to the representations.

## OFFICERS COMMENTS

Applicants have ample opportunity to discuss, clarify and amend their bids under the evaluation process before the panel issues its draft evaluation. After this stage, no new information will be permitted.

### The final determination

Rank would welcome confirmation that the same Licensing Committee members consider and determine all applications at Stage 2.

## OFFICERS COMMENTS

The Licensing (Gambling and Licensing) Sub Committee will determine all applications at Stage 1 of the process. This Committee consists of 3 Members. The Licensing Committee will consider all evaluations at Stage 2 of the process. This Committee consists of 10 Members.

### The Draft Agreement

### Continuing Obligations

Clause 5.4 of the draft agreement state that "in the event of the transfer of the licence or provisional statement, the licensees covenants herein shall continue unless and until the Council agrees in writing to cancel this deed". Rank does not believe that it will be possible for any licensee to ensure compliance with the obligations in the agreement by its successor licensee following the transfer of the premises licence and would therefore suggest that this clause be struck out of the agreement.

## OFFICERS COMMENTS

The Council considers that it is prudent to ensure that all obligations, by any successor on transfer of the licence, are complied with and therefore this clause will be retained.



Determination of the issue of the greatest benefit

Under paragraph 5, "The Final Determination" at page 10, a list of the documentation that will be supplied by the Evaluation Panel to the Licensing Committee is provided, which will assist it in determining the issue of greatest benefit. It is clearly important that the decision relating to the greatest benefit should be properly identifiable as a decision of the Licensing Committee in the exercise of its own judgement. Rank would be grateful for clarification as to the length of time that the Licensing Committee will be given in order to study the documentation listed. The documentation will be extensive and if sufficient time is not given for the Licensing Committee to consider it thoroughly, it might be thought that the ultimate decision as to which of the competing applications would be likely, if granted, to result in the greatest benefit to the Authority's area, was not independently made by the Authority itself, upon proper consideration of all the materials before it.

Further under the same section, the draft application pack envisages that "the Committee will be unlikely to need to interview applicants or seek further evidence or representations". As stated previously, Rank has concerns relating to how conditions might be identified and imposed on a licence in the absence of a hearing at Stage 2 and seeks clarification in this regard. This section also envisages that, if the Committee does decide to interview applicants the same facility will be offered to all applicants to ensure equality of treatment. Rank would welcome clarification of what is meant by "the same facility". If, for example, the Licensing Committee had concerns relating to one applicants evidence of its ability to fund the proposed development but did not have similar concerns in connection with other applicants, Rank would not expect an interview or hearing to be held for all applicants to address the Committee on funding. However, Rank would expect all applicants to be treated equally in terms of their opportunity each to address the Committee upon any particular concerns the Committee might have about their individual application. Rank would welcome confirmation that this is what is meant by "the same facility".

**OFFICERS COMMENTS**

As too the length of time for consideration of the Stage 2 papers, the authority will ensure that the Committee has all the time it needs to come to a proper determination. If, as part of the Committee's consideration it decides that it needs to interview an applicant, it will take such steps as are necessary to ensure that the principle of equality of opportunity is observed. It is not possible in advance to determine precisely what that principle will require, because this will be dependent on the facts and circumstances of the individual case. The outcome, however, will ensure that all applicants have an equal opportunity to present their submission.

Confidentiality

Rank would welcome confirmation that the confidentiality obligations of members of the Advisory Panel and Licensing Committee will also extend to officers of the Licensing Authority.

**OFFICERS COMMENTS**

The Council confirms that the officers of the Local Authority are also bound by the obligation as to confidentiality.

Paragraph 4 - operating issues

The following matters relate to operational issues arising out of the paperwork referred to in each instance.

Stage 2 Application Form – Notes for Guidance

Rank seeks clarification as to whether the CD referred to should include digital versions of all attachments, such as annual reports and company manuals (or extracts)?

**OFFICERS COMMENTS**

An applicant can submit digital versions of documentation if so desired.

Paragraph (unnumbered) paragraph 2 on page 2 of the Stage 2 Application Form – Notes for Guidance

Reference is made to the requirement for an applicant to provide an indication of the times and numbers of low or no stakes gaming tables which would be involved in the proposal. Rank seeks clarification as to whether "the times" refers to the hours of operation of the low limit tables or whether it relates to how often these tables will be open?

Is the Licensing Authority able to provide an assurance that materials supplied by Rank as part of the bidding process, such as extracts or complete copies of manuals, policies and company strategies, will not be shared with, shown or exposed to the winning applicant in the event that Rank's bid is not successful?

Thank you for your assistance in relation to this matter, should you have any queries, please do not hesitate to contact Suzanne Davies of these offices. We look forward to hearing from you.

**OFFICERS COMMENTS**

This part of the application pack has been amended to read,

'..... if there is a proposal to offer low – or no – stakes gambling, the applicant should give details of the provision, including the days and times the tables will be operated, the numbers of tables involved, .....

It is not the intention of the Council to share with, show or expose any of the materials supplied by any losing bidder to the winning applicant.