

Bath & North East Somerset Council

MEETING:	Licensing Committee
MEETING DATE:	16th April 2013
TITLE:	Stage 2 Casino Premises Licence - Application by Global Gaming Ventures Limited to extend the duration of a Provisional Statement
WARD:	ALL

AN OPEN PUBLIC ITEM

List of attachments to this report:

Annex A: Provisional Statement granted to Global Gaming Ventures and Annexes.

Annex B: Schedule 9 Agreement

List of attachments which are exempt from the public domain

Annex C: Application by Global Gaming Ventures Limited to extend the duration of a Provisional Statement

Annex D: Extracts from the final report of the Casino Advisory Panel

Annex E: Representations from Global Gaming Ventures Ltd

Annex F: Decision of the Licensing Committee dated 9 August 2012 on the application made by Global Gaming Ventures for the grant of a Provisional Statement for a small casino

Annex G: Correspondence between B&NES and Global Gaming Ventures Limited regarding the timescales for construction in their Stage 2 bid

1 THE ISSUE

1.1 An application has been made by Jeffrey Green Russell Limited, solicitors acting on behalf of Global Gaming Ventures Limited ("GGV"), to extend the duration of a Provisional Statement granted to GGV by the Licensing Committee on 9 August 2012.

2 RECOMMENDATION

The Licensing Committee is asked to:

- 2.1 Determine whether or not to grant the application in the terms sought or impose an alternative duration to that sought or decide that the duration of the Provisional Statement is not extended.

3 FINANCIAL IMPLICATIONS

- 3.1 Under Schedule 9 (10) (4) of the Gambling Act 2005 (“the 2005 Act”) the Council has the legal responsibility to determine an application to extend the duration of a Provisional Statement granted by the Council. The 2005 Act makes no provision to charge a fee for an application to extend the duration of a Provisional Statement and the Council has no mechanism to make a charge.
- 3.2 The cost of running the competition, granting the licence and associated work was covered by a specific reserve of £300,000 plus £32,000 from the original bid applicants. Circa £8,250 of this remains and will be drawn down as required by Public Protection to cover the cost of providing specialist legal support to the Licensing Committee (“the Committee”) and the committee process and any costs over the earmarked reserve will be met from service revenue budgets.
- 3.3 If the Licensing Committee determine to extend the duration of the Provisional Statement, this will extend the time period for applying for a premises licence and may in turn cause a consequential delay in the application for the licence, the development of the scheme and the benefits provided in the Schedule 9 Agreement dated 16 August 2012 and made between the Council, GGV, Deeley Freed Estates and AS Wollenberg.

4 THE REPORT

- 4.1 The Licensing Authority (“the Authority”), was given permission to grant one small casino premises licence (“the Licence”) in its area on 20 May 2008 under the Gambling (Geographical Distribution of Casino Premises Licences) Order 2008.
- 4.2 The Council resolved to take the necessary steps to issue the Licence within its area pursuant to those Regulations, Part 8 and Schedule 9 of the 2005 Act and The Gambling (Inviting Competing Applications for Large and Small Premises Licences) Regulations 2008.
- 4.3 The application process involved a two stage competition procedure. Stage One is a regulatory stage where, if a licensing authority was able to grant more than one Licence, it would award each successful applicant.
- 4.4 Under Section 204 of the 2005 Act an applicant may apply for a provisional statement in respect of premises that they expect to be constructed or altered or expects to acquire a right to occupy. Once a provisional statement has been granted, an applicant can then apply for a Licence once the relevant criteria have been met.
- 4.5 Four applications, each for a provisional statement, were received and all applications were successful. All four applicants were then invited to apply for Stage 2 of the application process.

- 4.6 Two applications were received at Stage 2 from Apollo Resorts and Leisure Limited and GGV. If there is more than one application at Stage 2, the Authority is required to determine which of the competing applications, if granted the Licence, would be likely to deliver the greatest benefit to the Authority's administrative area.
- 4.7 Under Schedule 9 paragraph 5 (b) of the 2005 Act where a licensing authority does award more than one Licence it may enter into a written agreement with an applicant, whether as to the provision of services in respect of the authority's area or otherwise (a Schedule 9 Agreement)
- 4.8 An independent Evaluation Panel was appointed to assess the bids and draft a report to the Committee with recommendations on which development would deliver the greatest benefit to the Authority's administrative area.
- 4.9 The Committee met on 7 August 2012 to consider the Panel's report, and assess the two bids. The Committee itself conducted an extensive evaluation of each application in accordance with the Council's devised Evaluation Criteria and Scoring Matrix. The Committee's decision and reasons determining which applicant's bid would be likely to result in the greatest benefit to the area of the Authority was agreed by all Members on 9 August 2012.
- 4.10 The Committee resolved on 9 August 2012 to grant a Provisional Statement, with conditions, to GGV.
- 4.11 Under Schedule 9 paragraph 10 (3) of the 2005 Act, an Authority may provide in the provisional statement for it to cease to have effect at the end of a specified period.
- 4.12 The Committee considered the duration of the Provisional Statement to be granted under Schedule 9. Given the state of advancement of the proposal, the Committee considered that it was reasonable to provide that the Provisional Statement shall cease to have effect at the end of 12 months from the decision.
- 4.13 Following the Committee's decision, the duration of the Provisional Statement was imposed as a condition. The Authority sent notification of the Committee's decision and reasons together with statutory notices of Grant and the Provisional Statement itself to GGV on 16 August 2012. The Notice of Grant and Provisional Statement with Annexes issued to GGV is attached at Annex A and a copy of the Schedule 9 Agreement is attached at Annex B.
- 4.14 The Schedule 9 Agreement dated 16 August 2012 provides that various benefits will be triggered once the casino is open and operating and others when Deeley Freed Limited has entered into various contractual obligations. A summary of the benefits are; an allocation of the of gaming yield will be paid to the Council, a guarantee as to the provision of jobs and training, the offer of development opportunities and to work with BANES Public Realm and Strategy Team.
- 4.15 Jeffery Green Russell Limited, Solicitors acting on behalf of GGV, has made a written application to the Council requesting that the duration of the Provisional Statement is extended for an additional 18 months, or such other reasonable period as the Committee may grant. A copy of the letter received from GGV is provided at Annex C.

- 4.16 The Committee resolved on 9 August 2012 that the Provisional Statement would cease to have effect at the end of 12 months, from that date, on the basis that the development was at an advanced state. To remind Members of the material upon which they assessed the bid by GGV and the timescales involved for the delivery of the scheme, that part of the final report of the Casino Advisory Panel relevant to GGV's application is provided at Annex D. The representations made by GGV to the Evaluation Panel's report is provided at Annex E. A copy of the decision made by the Licensing Committee on 9 August 2012 is provided at Annex F. Correspondence between GGV, Deeley Freed and B&NES regarding the duration of the Provisional Statement, post grant, is provided at Annex G. It is understood that the applicant will be providing further submissions to support their request to extend the time of the Provisional Statement, if this information arrives in time then they will be circulated to the committee ahead of the meeting.
- 4.17 The Gambling Act 2005 Schedule 9 paragraph 7(2) (c) provides that a Schedule 9 Agreement may be varied. Therefore, the Committee can consider whether to request an additional financial payment from GGV as a means of showing its commitment in progressing the scheme.
- 4.18 Where an Authority grants or rejects an application to extend the duration of a Provisional Statement the applicant may appeal in the Magistrates' court within a period of 21 days beginning on the day that the applicant receives notice of the decision
- 4.19 On appeal the Magistrates court may;
- a) dismiss the appeal
 - b) substitute for the decision appealed against any decision that the licensing authority could have made
 - c) remit the case to the Authority to decide in accordance with a direction of the court
 - d) make an order about costs
- 4.20 A decision shall have no effect while an appeal could be brought or has been brought and has not yet been finally determined or abandoned but an Authority can decide that the decision may take effect pending the outcome of an appeal.
- 4.21 A party to an appeal in the Magistrates' court may appeal on a point of law to the High Court.

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.

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
The Committee fail to determine the request to extend the duration of the Provisional Statement.	The request is not considered in accordance with the relevant legislation and agreed procedures exposing the Council to the risk of a judicial review and possible claims for compensation.	That officers ensure that the Committee follow the relevant legislation and agreed procedures and give due consideration to the request and come to a decision and provide reasons for their decision.

6 EQUALITIES

6.1 An Equality Impact Assessment (EqIA) has been completed. No adverse or other significant issues were found.

6.2 The Committee will take into account their equality duties in determining this issue.

7 CONSULTATION

7.1 There is no provision for the making of representations on such an application and therefore no consultation was required for this issue.

8 ISSUES TO CONSIDER IN REACHING THE DECISION

8.1 Human Rights.

9 ADVICE SOUGHT

9.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	<p>Andrew Jones, Environmental Monitoring and Licensing Manager.</p> <p>Tel: 01225 477557</p>
Background papers	<p>The Gambling Act 2005</p> <p>The Gambling (Geographical Distribution of Casino Premises Licences) Order 2008.</p> <p>The Gambling (Inviting Competing Applications for Large and Small Premises Licences) Regulations 2008</p> <p>Guidance to Licensing Authorities issued by the Gambling Commission dated May 2009.</p> <p>B&NES Statement of Principles dated January 2013</p>
<p>Please contact the report author if you need to access this report in an alternative format</p>	