



City of Westminster

# Minutes

Meeting:

**Licensing Committee**

Date of meeting:

**Wednesday 16 March 2011 at City Hall, 64 Victoria Street, London, SW1E 6QP**

Attendees:

**Councillors:**        **Audrey Lewis (Chairman)**  
**Ahmed Abdel-Hamid**  
**Alan Bradley**  
**Michael Brahams**  
**Nicholas Evans**  
**Jonathan Glanz**  
**Andrew Havery**  
**Patricia McAllister**  
**Harvey Marshall**  
**Tim Mitchell**  
**Aziz Toki**

Apologies:

**Councillors Jean-Paul Floru, Lindsey Hall, Gwyneth Hampson and Jan Prendergast.**

Contact:

**Jonathan Deacon**  
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## 1. **DECLARATIONS OF INTEREST**

1.1 There were no declarations of interest.

## 2. **MINUTES**

2.1 **RESOLVED:** That the minutes of the meeting held on 17 November 2010 were approved and signed by the Chairman as a true and correct record of the proceedings.

## 3. **TABLES AND CHAIRS**

3.1 James Armitage, Acting Service Manager, Environmental Health Consultation and Licensing, introduced the item. There was a split responsibility for the units in relation to tables and chairs. The Licensing Service in Premises Management was responsible for all new licence applications and renewals for tables and chairs. It was also responsible for management of lapsed licences. Street Management was responsible for the enforcement against unlicensed tables and chairs. The Planning department issued all planning permissions for those businesses that were required to have planning permission prior to obtaining the tables and chairs licence. A project was underway to improve the processes for tables and chairs licensing with a number of teams involved in the execution of tasks. Mr Armitage stated that there had been a decline in the number of renewal applications for tables and chairs. However, there had not necessarily been a similar decline in the number of tables and chairs on the street. Street Management was reviewing the status of all premises with tables and chairs on the highway in Westminster and establishing whether they were on a public forecourt and if they were licensed or not. Currently there were a total of 170 premises identified with unlicensed tables and chairs. 70 premises had been visited and had been sent warning letters. In the first instance the approach was to find out which premises have unlicensed tables and chairs and invite them to apply for a licence. Enforcement action would be taken if those premises avoided taking the necessary steps to apply for a licence. It was intended that there would be an increase in applications for tables and chairs licences and a decrease in unlicensed ones to assist with the aim of the Licensing Authority delivering a cost neutral licensing service.

3.2 Mr Armitage confirmed in reply to a question from Councillor Abdel-Hamid that a list of premises with a tables and chairs licence could be made available to Members. Following the recent audit, a list of premises that did not have the required tables and chairs licence was also available. The Chairman responded that it would be useful for Members to be provided with these lists and in particular the specific data that was relevant to the wards they represented.

3.3 **RESOLVED:** (i) That Members of the Licensing Committee be provided with a list of premises with a tables and chairs licence and also a list of premises that did not have the required tables and chairs licence.

(ii) That the contents of the report be noted.

#### **4. APPEALS**

- 4.1 Peter Large, Head of Legal and Democratic Services, advised the Committee on the current position concerning licensing appeals involving the Council. With regard to Endurance Public House in Berwick Street, a renewed application to the Court of Appeal for an oral hearing and to stay the order was received and was heard by the Court of Appeal in May 2010. The application for permission to appeal was granted but limited to one ground only which was that “the court erred in directing that it would only reverse the decision of the Licensing Sub-Committee if it was satisfied that the decision was wrong”. The Claimant had put forward the case that the Court should not have any deference to the decision of the Licensing Sub-Committee at all. The appeal was heard on 9 November 2010. Judgment had subsequently been received dismissing the appeal and costs had been awarded to the Council. The Court of Appeal refused permission for the Claimant to appeal to the Supreme Court.
- 4.2 Members were advised that in respect of Bathurst Deli, 3 Bathurst Street, the full hearing of an appeal had been held on 27 January 2011. Having considered all the evidence the District Judge had dismissed the appeal on the grounds that the variation sought would not promote the licensing objective of the prevention of public nuisance. Costs were awarded to the Council. In respect of British Luxury Club, New Bond Street, an appeal was heard on 9 and 10 March 2011 relating to three temporary event notices which had been refused shortly before by the Licensing Sub-Committee. The appeal was dismissed on the grounds that a Counter Notice was necessary in order to promote the crime and disorder objective. Costs were being sought. In respect of Betfred in Gerrard Street, an appeal lodged on behalf of London Citizens was dismissed at a preliminary hearing. An application for permission for Judicial Review of the Sub-Committee’s original decision had now been lodged by London Citizens. An appeal against the Licensing Officer Panel’s decision to revoke the street trading licences in respect of Pitches 532A and 651 Church Street was dismissed in December 2010 and costs were awarded to the Council.
- 4.3 Mr Large stated that appeals had been lodged for Al Dar in Edgware Road, Oxygen in Irving Street, Marble Arch Food and Wine in Edgware Road and Pitch 1794 in James Street. The solicitors for Jewel had been granted permission for judicial review of a judgement made by District Judge Roscoe in December 2009 relating to an application which had been refused by the Sub-Committee in May 2009 and the full hearing was scheduled for 8 April 2011.
- 4.4 Hayley Davies informed Members that there had been further developments regarding the Vendome review application which had been heard by the Licensing Sub-Committee on 28 January 2011. The Police and the Licence Holder had appeared to reach agreement at the hearing that the premises should be sold to new operators which the Police deemed reputable. One of

the conditions attached to the licence required that the licence would be suspended from 12 March 2011 for a period of three months or until the date that the premises licence was transferred to new operators approved by the Police. However, the Licence Holder for Vendome had not attempted to sell the premises since the hearing and had submitted an appeal to the Magistrates' Court. The Designated Premises Supervisor had been changed but appeared to be still involved with the premises. Mr Large stated that the Council would be pushing for the appeal to be heard at the Magistrates Court as soon as possible. He added that one of the issues when appeal applications are submitted by the Licence Holder is a decision or any conditions set out at a Licensing Sub-Committee review hearing would not be enforced until the appeal case was heard.

4.5 **RESOLVED:** That the position regarding licensing appeals be noted.

## 5. LICENSING NEWS

5.1 Councillor Bradley raised the point that whilst on the whole the reporting of Licensing Sub-Committee decisions in 'Licensing News' was accurate, on a few occasions the reporting had been incorrect or misleading. One such example had been an account of an application for Karaoke Box in Frith Street. It had been stated that the Sub-Committee had been satisfied that the extension of hours at the premises would not add to cumulative impact. The actual position was that because previously the applicant at Karaoke Box had been granted a licence beyond core hours on the grounds it was an entertainment led venue and the Applicant had subsequently successfully appealed against the refusal by the Sub-Committee of a further application with an even later terminal hour at Karaoke Box, the Committee chaired by Councillor Bradley had been required to take into account legal advice which expressed that a precedent had been set. It would be very difficult for the Council to defend a refusal of an application for extended hours there. Councillor Bradley commented that it was a matter of concern because for many on the Licensing News distribution list this was the only information they received regarding the applications. He added that he appreciated that Licensing News was published the day after the Sub-Committee hearings were held and believed that there would be no harm in publishing an account of the decisions the following week.

5.2 The Chairman stated that there was the matter of Members and officers of the Council being deluged with telephone calls if no record of the decisions was published shortly after the Sub-Committee meetings. She considered that it was the rationale included in the accounts of the decisions in Licensing News which occasionally raised issues and proposed that the brief account which was included in the Council's 'Weekly Information Bulletin' publication would also be acceptable for inclusion in Licensing News. A more detailed account could be provided when the decision sheets that were sent out with the decision letters were finalised and appended to Licensing News. It was agreed that this would reduce officers' workload in the Licensing Service who had been required to provide a more detailed account of the decisions the following day in Licensing News. It would also not add to officers' workload in

the Council, Cabinet and Committee Secretariat as they were already required to record the decisions in the Weekly Information Bulletin and produce the decision sheets distributed with decision letters. Peter Large confirmed that the record of the decisions in Licensing News did not constitute the Sub-Committee's official reasons for their decision and that there were no issues with briefer accounts being included in Licensing News. The final details of the decisions recorded in Licensing News would be discussed between officers in the Licensing Service and Council, Cabinet and Committee Secretariat.

- 5.3 **RESOLVED:** That the final details of the decisions recorded in Licensing News be discussed between officers in the Licensing Service and the Council, Cabinet and Committee Secretariat in Legal and Democratic Services with a view to the summary of decisions in the Weekly Information Bulletin also being included in Licensing News.

## 6. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

- 6.1 Chris Wroe, Licensing Policy and Strategy Manager, provided an update to the Committee on Sex Entertainment Venues ('SEV') legislation. Section 27 of the Policing and Crime Act 2009 had introduced a new category of sex establishments called "sexual entertainment venues" and gave local authorities in England and Wales the power to regulate lap dancing clubs and similar venues. The Cabinet Member for Business, Enterprise and Skills, Councillor Connell considered that the Council should adopt the change in the legislation. It was anticipated that a Cabinet Member decision would be taken within the next 10 days passing a resolution that the provisions would formally come into effect from 1 October 2011. The Council would be required to give formal notice of this to the media. The provisions that would apply would include that there was no definite right for existing SEVs to be permitted to continue in the longer term. They would have six months to make an application and then during the next six months, any other applicant wishing to run a SEV would be able to apply. During the 12 month period, all existing premises would be able to continue to operate or until the Council was able to determine the application. At the end of the 12 month period, the Council would be operating exclusively under the new sex establishment licensing regime.
- 6.2 The Chairman commented that unlike some boroughs, Westminster had not experienced any particular problems with lap dancing clubs and had an efficient enforcement regime. This had included a 'metre rule' condition on the licences which separated the performer from the customer. She had spoken to representatives of a number of Amenity Societies including The Soho Society, Covent Garden Community Association and South East Bayswater Residents' Association and also Peter Stringfellow and they had all been supportive of the adoption of the policy.
- 6.3 Mr Wroe informed Members that unlike under Licensing Act 2003 legislation, the Council would be able to draft standard conditions for SEV licences. Draft consultation proposals would be produced in the next few weeks. The venues

would be required to renew their licences every year. Fees would be set to recover the costs of administering the system.

- 6.4 Councillor Bradley raised the matter that at the previous week's Licensing Sub-Committee there had been three applications listed on the agenda. The applicants for all three applications had applied for later hours than those stated in the Council's Core Hours policy. The premises were not in the Council's designated Stress Areas although they could be deemed 'areas of stress'. In two of the cases involving applications in Edgware Road and Villiers Street, Environmental Health had agreed conditions but had maintained their representations. For the third case however regarding another application in Edgware Road called Kandoo Restaurant, Environmental Health had withdrawn their representation. As there were no other representations, the application had been granted under delegated authority prior to the hearing. He expressed the view that there was inconsistency in these cases and that the third application he was referring to ought to have been heard at the Sub-Committee. Councillor Mitchell made the point that the Responsible Authorities could take the view that the operator would be acceptable but if the restaurant was sold new operators could come in and problems ensue. The Chairman added that the Council's Core Hours policy was an essential part of the Council's licensing policy and it was safer for such applications which were for hours in excess of the Council's Core Hours but not in one of the designated stress areas to be considered by the Sub-Committee. James Armitage responded that he would pass on the Committee's concerns to Environmental Health on this particular issue.
- 6.5 The Chairman brought to the Committee's attention that at a recent informal meeting of the Chairmen of the Licensing Sub-Committee, Councillor Floru had commented that he did not feel that there were sufficient policy statement details in Sub-Committee reports. She advised Members of the Committee that if they considered that there were any aspects of the Sub-Committee reports which were inadequate they should raise it after the meetings. She regularly had a meeting with officers and her Member colleagues on the Sub-Committee after the applications had been heard. Councillor Bradley stated that he had previously commented on the style of reports, in particular the recommendation for refusal which was included in all the reports even when it was inappropriate. Peter Large stated that there was not a requirement to include a recommendation to refuse in Licensing Sub-Committee reports. He added that a suggestion made by Councillor Evans that Members reading the reports be advised of an 'adverse representation' would be more consistent with the legislation. If there was no recommendation at all, it would need to be made clear exactly what the Licensing Authority's policy was for each application. The Chairman stated that it would be wise to give consideration to this matter outside the meeting and have a definite recommendation at a future meeting of the Committee.
- 6.6 Councillor Bradley stated that recently Councillor Mitchell had not been able to consider an application for premises in his ward, St James's Ward. He asked why there was a rigid hard and fast rule for licensing applications at

Sub-Committee meetings which prevented Members considering applications for premises in their own ward, particularly as they were informed on matters there. Councillor Lewis replied that there was not a legal reason for this but the Council's Rules of Procedure governing applications under the Licensing Act 2003 advised that Members should not consider applications. Peter Large confirmed that it was not a legal requirement. He also informed Members that the Members' Code of Conduct was being abolished under the Localism Bill and that the Council might need a specific code of conduct adopted for Planning and Licensing Committees. There was the potential for an item on this matter being included on a future Licensing Committee agenda.

6.7 The Chairman formally thanked Inspector Neil Acheson on behalf of the Committee for his major contribution in Westminster. This included his current role in the Westminster Police Licensing Team which he was shortly to retire from.

6.8 **RESOLVED:** (i) That Environmental Health be informed of the Committee's concerns regarding the application for Kandoo Restaurant in Edgware Road being granted under delegated authority referred to in paragraph 6.4 above.

(ii) That consideration be given as to whether recommendations should continue to be stated in Licensing Sub-Committee reports referred to in paragraph 6.5 above.

## 7. FUTURE LICENSING COMMITTEE MEETING DATES

7.1 It was noted that the next meetings of the Licensing Sub-Committee would be held on Wednesday 13 July 2011 at 10.00am, Wednesday 16 November 2011 at 10.00am and Wednesday 14 March 2012 at 10.00am.

## 8. CLOSE OF MEETING

8.1 The meeting ended at 11.53pm.

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Chairman

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Date