



# Minutes

Meeting:

**Licensing Committee**

Date of meeting:

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

Attendees:

**Councillors:**            **Audrey Lewis (Chairman)**  
                                 **Alan Bradley**  
                                 **Michael Brahams**  
                                 **Melvyn Caplan**  
                                 **Nicholas Evans**  
                                 **Gwyneth Hampson**  
                                 **Patricia McAllister**  
                                 **Harvey Marshall**  
                                 **Tim Mitchell**

Apologies:

**Councillors Ahmed Abdel-Hamid, Jean-Paul Floru,  
Lindsey Hall, Andrew Havery, Jan Prendergast and  
Aziz Toki.**

Contact:

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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 13 July 2011 were approved and signed by the Chairman as a true and correct record of the proceedings.

## 3. **LICENSING ACT 2003 – DEREGULATION OF ENTERTAINMENT**

3.1 Steve Harrison, Operational Director for Premises Management, addressed the Sub-Committee on the Department for Culture, Media and Sport's ('DCMS') consultation entitled 'Regulated Entertainment – A Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003'. He stated that DCMS were proposing changes to licensing law which were far reaching and if implemented would completely change the relationship between licensing authorities, proprietors of entertainment venues and residents who lived nearby as it would take away most of what was currently defined in the Act as regulated entertainment and remove it from the licensing regime. There were a few exceptions including boxing and wrestling and events with an audience of more than 5000 people. The DCMS consultation document emerged in the context of a statutory framework which was already undergoing significant change and indeed clashed with a number of the changes. The Police Reform and Social Responsibility Act had received royal assent and the implementation dates were awaited. One of the changes proposed in the Police Reform and Social Responsibility Act was with regard to temporary event notices which would for the first time allow Environmental Health officers to object to these on the grounds of noise, health and public nuisance grounds and apply conditions. This change which was clearly intended to plug a gap in existing legislation could be swept away with the regulated entertainment licensing requirements if the DCMS proposals were enacted. There was also a Live Music Bill being promoted by Lord Clement Jones making its way through Parliament which if enacted would apply a more moderate form of de-regulation of entertainment in licensed premises. It proposed that un-amplified live music between 8pm and 11pm in any location would be de-regulated. Amplified live music during these hours if linked to a licensable premise and activity with an audience of less than 200 would also be exempt. The Bill would retain the ability for local people and responsible authorities to seek to review or revoke a licence in the event of public nuisance. If the DCMS consultation document proposals were enacted the Live Music Bill would become redundant.

3.2 Mr Harrison added that the DCMS consultation was based on the assumption that problems arise from alcohol fuelled anti-social behaviour and that entertainment was not normally a cause of public concern. This might be the case for some of the matters referred to in the consultation such a carol concert in a church hall but was not the case for the nightclub that stopped selling alcohol at 1am but continued to play music until dawn with the impact

of public nuisance from patrons leaving the premises throughout the early hours of the morning. There was the potential to allow any premises to open up a premise as an entertainment venue without any public safety checks, no capacity checks and operate it 24 hours a day as long as the operator was not selling alcohol. It was also questionable to assume that entertainment was always socially acceptable. Any entertainment related disputes between premises, their customers and local residents would not go away. They would merely be transferred to another forum to be dealt with. Dealing with noise issues would move from proactive assessment back to reactive enforcement with the cost of that being met by local taxpayers. This would be rather than the cost being recovered by the local authority charging the premises a reasonable fee as envisaged in the Police Reform and Social Responsibility Act legislation. The consultation paper offered a glimmer of hope that existing licensing conditions for existing premises linked to entertainment would remain in force. However, all that was being suggested was that the licensing authority would not have to reissue every licence in order to remove the entertainment related conditions. Any premise would be able to submit a variation application to remove conditions relating to sound limiters, keeping doors or windows closed or have music played outside in beer gardens and the local authority would find it hard to oppose their removal. Whilst the consultation document did identify some anomalies in the current system, it was going too far and would make it difficult to police any form of nuisance. A few authorities had initially thought the proposals to be sensible. However, Kensington and Chelsea had now followed Wandsworth in vigorously opposing the DCMS proposals.

- 3.3 The Sub-Committee discussed the DCMS proposals. The Chairman commented that she had been sufficiently concerned to include the consultation document as an item for discussion at the Westminster Amenity Society Forum. Knightsbridge Association had subsequently written to Mark Field MP who had written to the relevant Government Minister, John Penrose. There had been a misunderstanding of the problems the proposals were likely to cause at ministerial level and so the Council had contacted Mark Field MP again. He had suggested that a debate needed to take place on this issue in the House of Commons. The Chairman added that she had a particular concern that although Environmental Health would in the near future under the Police Reform and Social Responsibility Act legislation be able to make a representation for Temporary Event Notices on the grounds of public nuisance for events such as the Notting Hill Carnival, these powers would become redundant if the DCMS proposals were enacted.
- 3.4 Members of the Committee agreed that whilst there were some anomalies in the Licensing Act such as a carol concert in a church hall, the DCMS proposals went too far. Concerns were expressed by Councillor Brahams and Councillor Evans respectively regarding the potential for noise nuisance from amplified music and operators being able to have 2 venues, 1 substantial one for entertainment and a pub or bar next door. Andrew Ralph advised Members that there were not any venues in Westminster apart from Trafalgar Square and Hyde Park with a capacity of over 5000 and that it was extremely rare for music not to have been the major cause for review applications that

had been submitted. Inspector Ironside had concerns about the reactive nature of policing if the proposals became law. Councillor Caplan recommended that it would be beneficial to respond in a positive fashion to the document and state what the Council would be willing to support, notably removing the anomalies that existed. However, DCMS should be informed that the proposals for de-regulation were too broad. Councillor Mitchell recommended linking in to the response any aspects of Lord Clement Jones' Live Music Bill which the Council supported.

- 3.5 It was agreed that officers would finalise a draft response to the DMCS consultation document proposals and circulate the response to Members of the Committee for comment. The final version of the Council's response to the consultation would be approved by Councillor Connell, the Cabinet Member for Enterprise and Volunteering in conjunction with the Chairman of the Licensing Committee. Councillor Marshall made the point that the Council should also consider contacting Karen Buck MP in lobbying against the DCMS deregulation proposals, in addition to Mark Field MP.
- 3.6 **RESOLVED:** That a response to the DCMS consultation document proposals for deregulation of entertainment be circulated to Members of the Committee for comment.

#### **4. WEST END POLICING AND LATE NIGHT LEVY UNDER THE POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011**

- 4.1 Mr Harrison introduced the item. He explained that the efforts of licensing officers were particularly focussed at the current time on looking to recover reasonable costs from the licensing process as a result of the fees the Authority was able to set. This fee setting provision, included in the Police Reform and Social Responsibility Act 2011, was forecast to become operational during the middle part of 2012. The Late Night Levy was also included in the Police Reform and Social Responsibility Act legislation. The aim of the levy was to permit licensing authorities to charge those businesses that benefit from trading alcohol in the late night economy for extra enforcement costs. Whether or not the levy was implemented was left entirely at the discretion of the licensing authority. In the areas where it would be introduced, the levy would be collected annually and the revenue would be split between the licensing authority and the Police in the ratio 30/70 respectively. Mr Harrison added that the Licensing Authority needed to start forming a view on whether to implement the levy and officers would appreciate a steer on this issue from Members.
- 4.2 The Chairman commented that the decision on whether or not to implement the levy was a political one. The implementation of the levy had the potential to attract criticism. There were premises such as restaurants and hotels which did not attract crime and disorder unlike some pubs, takeaways selling alcohol or nightclubs. It was noted that the levy could not be limited geographically so could not be concentrated in a designated Council stress area. It was also noted that the levy could only come into force after midnight. Councillor Mitchell made the point that the levy could be enforced after 1am

which would limit the number of restaurants affected but then so few premises would be affected after a certain hour that it was likely to make the viability of the levy questionable. Councillor Bradley asked whether officers had calculated the revenue obtained at different times of the evening if the levy was implemented. Mr Harrison replied that the fee model suggested that if the levy came into force at midnight and restaurants were included, revenue was likely to be approximately £0.5mn. He stated that for the next meeting of the Licensing Committee officers could provide a more detailed model of the potential impact of the levy in the event it was introduced with a few different scenarios. Inspector Ironside added that the Police would also need to form a view on the potential implementation of the levy.

- 4.3 **RESOLVED:** That a more detailed costing model of the potential impact of the late night levy be provided at the next meeting of the Licensing Committee.

## 5. APPEALS

- 5.1 Hayley Davies, Licensing Appeals Manager, advised the Committee on the current position in respect of licensing appeals. For Maya nightclub in Dean Street, the Sub-Committee had at the full review hearing decided to suspend the licence for a maximum period of 3 months, reduce all the licensable activities to a terminal hour of 2am and add additional conditions to the licence. The full hearing of the appeal took place in September 2011. The argument of the appellant was that a new operator had been found and that meant that the previous problems would not reoccur. The court dismissed the appeal, noting that the proposed new operator had no experience of running a nightclub and that the Licensing Sub-Committee had been correct to consider that the reduction of the terminal hour for the supply of alcohol would promote the licensing objectives. Full costs were awarded to the City Council.
- 5.2 Ms Davies informed the Sub-Committee that a hearing had taken place in the new Westminster Magistrates' Court from 24 October to 2 November 2011 to consider 2 appeals in relation to Vendome nightclub in Piccadilly. The first appeal was against the Sub-Committee's decision to revoke the premises licence following a third review and the second was as a result of the Sub-Committee's decision to refuse the transfer of the premises licence to the freeholder. The Police had objected to the transfer application as they had considered that the freeholders had not taken the necessary steps to resolve the problems at the premises. Only the freeholders and not the operators had taken part in the appeal proceedings. The District Judge upheld the Sub-Committee's decisions in both cases and substantial costs were awarded to the Council. The Chairman added that she had particular concerns regarding the second review hearing of the premises licence by the Sub-Committee. She did not believe that the Police licensing team had been advocating settlement. There had been members of the Police waiting to give evidence. However, the counsel representing the Police and the counsel representing the operators had reached an agreement and residents had not been privy to discussions. The Sub-Committee had given the operators three months to ensure that the premises changed hands as required under the terms of the deal but the operators then appealed this decision. It had later been

discovered that the barristers for the premises, the Police and the residents had all been part of the same chambers. She had raised this matter with the Police Borough Commander and Kit Malthouse, Deputy Mayor of London with responsibility for Police and local London Assembly Member.

5.3 Ms Davies stated that an appeal had been lodged against the decision of the Sub-Committee to refuse to grant a new premises licence for the basement area of St Martin's Hotel until 3am. The terminal hour of the licence in the basement was 12.30am but it had been operating until 3am already. The appeal was scheduled from 24 January to 2 February 2012. An appeal had also been lodged against the decision of the Sub-Committee to refuse a variation application which would have removed the requirement for alcohol to be ancillary to a table meal. The full hearing of the appeal was scheduled for 16 and 23 January 2012. Other appeals listed included The Club at The Ivy which was listed for a full hearing on 20 to 22 March 2012, a sex establishment licensing judicial review hearing which was scheduled for 9 March 2012, Pitch 925 Marylebone High Street which was listed for a Crown Court hearing on 3 February 2011 and Pitch 570, 571, 705 and 706 Church Street Market which was scheduled for 14 December 2011.

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

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

6.1 There were no further matters for consideration.

## 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 14 March 2012 at 10.00am and Wednesday 11 July 2012 at 10.00am.

## 8. CLOSE OF MEETING

8.1 The meeting ended at 11.18am.

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Chairman

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Date