



City of Westminster

Minutes

Meeting:

Licensing Committee

Date of meeting:

Wednesday 14 March 2012 at City Hall, 64 Victoria Street, London, SW1E 6QP

Attendees:

Councillors: **Audrey Lewis (Chairman)**
Ahmed Abdel-Hamid
Alan Bradley
Melvyn Caplan
Nicholas Evans
Jean-Paul Floru
Gwyneth Hampson
Andrew Havery
Patricia McAllister
Tim Mitchell
Aziz Toki

Apologies:

Councillors Michael Brahams, Lindsey Hall, Harvey Marshall and Jan Prendergast.

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1. **DECLARATIONS OF INTEREST**

1.1 There were no declarations of interest.

2. **MINUTES**

2.1 Councillor Hampson asked for an update in respect of the Department for Culture, Media and Sport's consultation document proposals for deregulation of entertainment. This had been considered at the previous meeting of the Licensing Committee in November 2011. The Chairman and Steve Harrison, Operational Director for Premises Management, informed her that the Council had responded to the consultation document and that the DCMS was currently considering responses received. The Chairman added that a ministerial level meeting had been requested and that Kensington and Chelsea and Camden shared Westminster's concerns. The Live Music Bill, which proposed that small venues in England and Wales under a 200 person capacity would no longer need local authority permission to host performances of live amplified music between the hours of 8am-11pm, had now been passed as an Act of Parliament and this appeared to go a long way to meeting the requirements of the music industry which was stated to have been one of the main reasons for the deregulation proposals. Mr Harrison stated that the Council was awaiting confirmation on the date when the Live Music Act legislation would come into effect. Currently it was expected to take effect in October 2012.

2.2 **RESOLVED:** That the minutes of the meeting held on 16 November 2011 were approved and signed by the Chairman as a true and correct record of the proceedings.

3. **CHANGES TO TEMPORARY EVENT NOTICES**

3.1 Deirdre Hayes, Service Manager, Environmental Health Consultation & Licensing, advised Members of the Licensing Committee that the Council was yet to receive final confirmation when the changes to the Licensing Act 2003 relating to Temporary Event Notices ('TEN') would occur following the enactment of the Police Reform and Social Responsibility Act 2011. However the indication was that they would come into effect on 6th April. One of the main changes was that Environmental Health would become a responsible authority in relation to TENs and would be able to object if they were of the view that the licensing objectives were being undermined.

3.2 Ms Hayes outlined the two options that were available to the Council in terms of dealing with the workload arising from the changes and asked for the Committee's views on the options so they could be considered by the Cabinet Member and officers of the Council. Option one involved the Environmental Health Consultation Team considering and responding to all TENs that were received. Any objections to TENs would have to be made within 3 working days from the receipt of the TEN. Approximately 2600 TENs were received per year and half were in the Council's designated stress areas. There were likely to be resource implications, particularly during peak periods. Option two

involved the licensing service assessing all TENs received against a pre-approved criteria including whether the application was in the Stress Area and its previous history. An Environmental Health Officer would then determine which TENs would have an objection raised against them. The criteria would result in the numbers of TENs reaching the Sub-Committee being reduced significantly.

- 3.3 It was agreed that there would be implications for Members and officers alike in terms of additional Licensing hearings if option 1 was taken up. There could be potentially 1300 TENs applications heard per year if all applications in the Council's designated stress areas reached the Licensing Sub-Committee. The Chairman spoke in favour of option 2, the triage approach as it was more manageable for all concerned. Councillor Mitchell made the point that it would not be possible to ensure a full recovery of costs if option 1 was taken forward and option 2 was the best and fairest for applicants if officers and Members were devoting their time to problem premises. Councillor Bradley asked what the best estimates were of the number of applications that would reach the Sub-Committee if option 2 was taken forward. Kerry Simpkin, Assistant Service Manager, advised that some work had been undertaken in this area and the best estimate was approximately 5% of the 1300 applications. Councillor Floru spoke in favour of option 2, requested that there was a regular review to ensure that the number of TENs heard by the Sub-Committee did not significantly exceed the 5% mark of those submitted and asked how officers would deal with the likely spike of additional applications in the run up to Christmas. Mr Simpkin replied that at peak times under option 2, more existing resources would be moved into this area. Councillor Lewis commented that she met Environmental Health officers on a regular basis and the number of TENs would be reviewed regularly.
- 3.4 **RESOLVED:** (i) That the changes that are proposed to take effect from 6th April 2012 relating to Temporary Event Notices under the Licensing Act 2003 be noted; and
- (ii) That option 2 be taken forward as the Committee's preferred option for handling Temporary Event Notices following the changes.

4. GENERAL LICENSING FEES (EXCLUDING SEX ESTABLISHMENTS) REVIEW 2012/2013

- 4.1 The Committee received a report which set out the methodology, costs, budgets and proposed fees for the general licensing regimes for 2012/13. Mr Simpkin stated that the fees for the likes of gambling premises and special treatment premises had not changed since 2004 and the proposed 2012/13 general licensing fees covered the costs of officer time. Some of the fees had increased and some had decreased. The overall projected income based on new fees was intended to enable the service to be cost neutral.
- 4.2 The Committee asked Mr Simpkin a number of questions as follows:

- Mr Simpkin informed Members that the online system was not provided by the Council. The Council received a service which was provided across the country by Business Link. There were few options to develop this further. His team was working closely with Business Link but there were restrictions on what could be achieved due to lack of government funding. He clarified in response to the Chairman's query that he had regular meetings with Business Link and stated that the Council was the highest user of the system with 11% of applications being submitted online. He explained the nature of the discussions he was involved in with Business Link, Uniform and Idox. Councillor Caplan stated that he was keen to take this forward and assist with improving the situation in his capacity as Cabinet Member.
- Councillor Floru asked how the officer costs were calculated. Mr Simpkin replied that each officer had his own costs and these were calculated in terms of the amount of time it would take to complete each stage of the process. Few of the non-Licensing Act 2003 applications reached the Licensing Sub-Committee. If there was an influx of applications which did require consideration by the Sub-Committee, it would be reflected in the officer time given the additional work this involved and therefore the budget the following year. The fact that betting shops applications were more likely to reach the Sub-Committee was reflected in the betting premises licence annual fee.
- Councillor Caplan asked about the budget projections for 2011/12. Mr Simpkin clarified that Appendix 2 of the report was for income received up to 17 February. As of that date, the income received was £200,000 down from the budgeted figure. It was expected however that the budgeted amount would be met by the end of year. Councillor Caplan asked whether any deficits over previous years had been recovered. Mr Simpkin responded that where there were deficits these were offset with increases in income such as gambling. The last few years' costs had been recovered. Mr Harrison added that it was areas such as street trading and sex shops, which were not in the list of the general licensing fees, where costs had not been recovered.
- Mr Simpkin stated in response to Councillor Bradley's question that it would be possible to assess the officer costings on an annual basis and that it was intended that a report detailing the general licensing fees would be provided to the Committee on an annual basis. Members agreed that this would be a very useful development. Mr Harrison confirmed that any savings achieved as a result of greater efficiency would be passed on as a reduction in the fees. Peter Large, Head of Legal and Democratic Services, stated that it would be very good practice to assess the fees on an annual basis given that the Council was being challenged on its fee setting for sex establishments having not reviewed these since 2004.
- The general licensing fees appendices in the report, including the comparison document between 2011/12 and 2012/13, were examined. Mr Simpkin stated in response to Councillor Bradley's question that there were likely to be more pet shops than were stated. In terms of special treatment premises, the majority were smaller businesses and they fluctuated in terms of renewals or submitting new applications. There had been a reduction in the number of renewal applications received. If less

income was being received, there would be a need to increase fees to cover the deficit. In response to Councillor Toki's question regarding the increase for dog breeding establishment fees, Mr Simpkin commented that there had been an increase in costs in order to process and determine applications. Few applications were received but a fee needed to be set for this. The Council had a significant workload in terms of zoos with inspections, veterinary services and Freedom of Information requests from animal rights organisations.

4.3 Mr Simpkin added that it was being proposed that there should be general licensing online application fee reductions, excluding sex establishments, for 2012/13. It was noted that this approach was supported by the recently appointed Cabinet Member for Public Health and Premises and was in line with Council policy to encourage more use of services online. The fee reductions would not cause significant financing issues. For example, 10% of those who made applications for special treatments applied online and the total discounts for these 10% would be approximately £2,000. The reductions would be £10 for fees less than £200, £30 for fees between £200 and £600, £50 for those between £600 and £1,000 and £100 for those above £1,000. The Committee approved the reductions, taking into account that this would be part of the Committee's annual review of the licensing fees.

4.4 **RESOLVED:** (i) That the proposed 2012/13 general licensing fees in Appendix I of the report be approved commencing 1st April 2012;

(ii) That the fee for zoo renewals will only take effect for existing licensed premises from the date of the next renewal;

(iii) That all of the changes approved by the Committee relating to the therapist registration scheme take effect on a date specified by the Operational Director for Premises Management;

(iv) That the exhibition licence fee review be deferred to a later date in 2012 and the current fee remain in effect until that review;

(v) That a general licensing fees review report be scheduled, and considered by the Committee, on an annual basis; and

(vi) That the proposed general licensing online application fee reductions for 2012/13 be approved.

5. **PROPOSED PROCESS FOR THE DETERMINATION OF AN APPLICATION TO USE AMPLIFIED NOISE EQUIPMENT**

5.1 The Committee received a report to consider the proposed process for the determination of an application to use amplified noise equipment. Nicola Stratford, Senior Practitioner - Street Licensing and the Chairman made the point that whilst Section 147 of the Police Reform and Social Responsibility Act 2011 regulated the operation of amplified noise equipment, the legislation did not specify how an application to use amplified noise equipment should be

determined and it was therefore important to have a process in place. An application had been submitted and subsequently withdrawn in recent months for the operation of amplified noise equipment in Parliament Square. It was noted that the Council had previously written to the Home Office in respect of how such an application should be administered.

- 5.2 Mr Large referred Members to the fact that there was a wider context to take into consideration which was Parliament's response to managing protest in Parliament Square. Under the provisions of the Police Reform and Social Responsibility Act, the local authority was required to consider an application to use amplified noise equipment within 21 days. Applications of this nature were extremely contentious as had been the case with the application submitted by Brian Haw. It was important to have a policy and the Sub-Committee had a difficult decision to make as Members would need to consider the rights of people to protest in Parliament Square.
- 5.3 Councillor Mitchell recommended that thought was given to the length of the licence granted for the use of amplified noise equipment. He did not believe that the granting of such a licence should be permanent. He also requested that the consultation process should involve residents and businesses within a 500 metre radius of Parliament Square because noise travelled considerable distances in the area. The Chairman stated that there was the question of consultation and how widely the Council could consult within the 21 day period. Ms Stratford advised that for the recent application the Council had consulted those within a 150 metre radius of Parliament Square.
- 5.4 Councillor Floru and Councillor Caplan both raised the point that it appeared to be inconsistent to charge a £200 fee for loudspeaker consents for a single day but charge £250 for multiple use within the period of up to 12 months. Mr Large advised that the Council was only permitted to charge a fee which covered the costs of dealing with the application. Councillor Caplan responded that there was the issue of continued monitoring over a period of time and that it was time to look at the fees issue again in the near future considering that they had been set by the Sub-Committee five years previously. The Chairman stated that Members were not against protest and that it might be best to allow a lower fee for a short period of loudspeaker consents but not permit continued use beyond a maximum number of days. Councillor Havery asked about the Council's communications with the Greater London Authority. An application for authorisation to operate amplified noise equipment on the footways that immediately adjoin the central garden of Parliament Square would be made to the Council. If people wished to use amplified noise equipment in the central garden of Parliament Square an application would have to be made to the GLA. Ms Stratford advised that GLA had expressed interest in meeting and working with the Council on any such applications they received. It was thought that the GLA might not have a process in place as it was likely that they had not received any applications to date.

5.5 The Committee agreed with Councillor Caplan's suggestion that the whole matter needed to be examined at a separate meeting. The matter would be put to a Licensing Urgency Sub-Committee, as requested by the Chairman.

5.6 **RESOLVED:** That the process for the determination of an application to use amplified noise equipment be considered at a meeting of the Licensing Urgency Sub-Committee.

6. HOME OFFICE CONSULTATION ON EARLY MORNING RESTRICTION ORDERS AND LATE NIGHT LEVY UNDER THE LICENSING ACT 2003

6.1 The Committee received a report which provided details of the Home Office consultation on early morning restriction orders and the late night levy. Mr Harrison stated that the deadline for responses to the consultation document was 10 April and any comments from Members of the Committee were welcome. The consultation was consulting on legislative change and the Council would not need to decide at this stage whether or not to adopt either of these powers.

6.2 It was agreed that early morning restriction orders and the late night levy appeared to have little value for the Council in their current form. The two particular concerns and those that would be included in the response to the consultation document were firstly the point made by the Chairman that the provision for a multiplier should also be applied to nightclubs. Nightclub proprietors argued that their establishments were not drink led and should not have the multiplier which was unfair on other establishments. The second point made by Mr Harrison was that local authorities would have some discretion on applying a late night levy including the type of premises it should apply to and the hours when it should be applied but the Council would not be able to restrict the levy to a specific geographical area. The Council wished to apply it to the designated stress areas. It was felt that the early morning restriction orders were a rather blunt instrument for prohibiting the sale and supply of alcohol in certain circumstances and were more applicable to those Councils who lacked solid licensing policies.

6.3 **RESOLVED:** (i) That the report be noted; and

(ii) That the comments of the Committee be taken into account in the Council's response to the Home Office consultation document.

7. WEST END POLICING AND LATE NIGHT LEVY

7.1 At the previous meeting of the Committee in November 2011, licensing officers had been asked to provide a more detailed costing model of the potential impact of the late night levy. This had been provided in a report and was explained by Mr Harrison. The financial figures calculated in the report were based on what the Home Office currently anticipated the charges to be. Westminster had 1118 premises whose terminal hour was after midnight. If the late night levy were to be applied to all, the income generated would be approximately £1.6m. If some of the premises were able to not have to pay

the multiplier on the grounds that they were not drink led, this would reduce the income generated to approximately £1.4m. If the levy was then not applied to the classes of premises which did not tend to create the potential for public nuisance or crime and disorder this would reduce the income generated to £450,000 and if the alcohol multiplier was removed from these premises it would reduce the figure further to approximately £300,000. It had been suggested that the cost of administering the scheme should be taken from the income generated and this figure was estimated at £20,000. The balance of the income generated was required to be shared between the Police and the local authority 70/30. It was noted that ultimately the Council might receive income of £85,000 if the late night levy was adopted.

7.2 **RESOLVED:** That the report be noted.

8. CHANGES TO THE COUNCIL'S THERAPIST REGISTRATION SCHEME

8.1 Mr Simpkin introduced the report, explaining the background and the reasons for the proposed changes to the Council's Therapist Registration Scheme ('TRS'). The TRS had been introduced by the Council in 1995, amending the requirement for individual therapists working in a special treatment premises to be named on the premises licence which became unmanageable with the high turnover of staff within the sector. The TRS was partly funded by the special treatment premises licences through their licence fee. However, this did not cover the full cost of providing this service and the Council was not able to charge therapists an application fee. A review of the TRS had been undertaken between September 2011 and January 2012 as part of the work within the department to achieve efficiency savings and better working practices. Over the last few years there had been a significant increase in the numbers applying for the TRS and this had caused significant resource implications.

8.2 Mr Simpkin stated that the specific aims of the proposed changes to the TRS included reducing the regulatory burden on businesses, improving the customer experience and removing backlogs. The nature of the changes was that registration would only be a requirement for therapists providing higher risk treatments. Therapists working in licensed special treatment premises who provided lower risk treatments would no longer be required to register. Existing standard conditions would be amended and new standard conditions would be introduced for special treatment premises so that therapists that provided higher risk treatments would be required to register with the Council. There would be a new requirement for the premises licence holder to ensure that practitioners providing lower risk treatments were suitably qualified.

8.3 Councillor Floru stated that he was of the view that the Council could go further with the proposals. It could be included within the amendments to the special treatment premises licence standard conditions that there was also a requirement for the licensee to ensure that unregistered special treatment practitioners providing higher risk treatments were suitably qualified and trained. It was unnecessary for the Council to keep the administration in place to monitor that and further savings could be achieved. Mr Harrison

commented that there appeared to be some advantages to maintaining the Scheme, particularly that the Council could be left in a reactive situation rather than a proactive situation in terms of relying on the licensee to oversee the practitioners rather than the Council. The Chairman added that whilst amendments could be made to the standard conditions placing the emphasis on the licensee, these would still need to be enforced.

8.4 The Committee agreed the suggestion made by Mr Harrison that the changes to the TRS be reviewed once they were in operation. The review would include higher risk treatments. Members agreed that a report would be provided for the next meeting of the Committee in July 2012.

8.5 **RESOLVED:** (i) That the proposed amendments as described in Appendix B of the report relating to the standard conditions for special treatment premises licences be approved;

(ii) That the proposed new therapist registration scheme application criteria as stated in Appendix C of the report be approved;

(iii) That all of the changes approved by the Committee relating to the therapist registration scheme take effect on a date specified by the Operational Director for Premises Management; and

(iv) That a review of the scheme be undertaken by officers and a report be provided to the next meeting of the Committee in July 2012.

9. APPEALS

9.1 Mr Large provided a summary of applications which had been considered by the Licensing Sub-Committee and had subsequently been appealed. An appeal against the decision of the Sub-Committee to refuse a variation application for Steak & Co, Ground Floor, 3-5 Charing Cross Road had been allowed. The Sub-Committee had refused the application as the applicant had sought a terminal hour for the bar area of 22:30 hours every day of the week and Members did not consider that there were exceptional reasons to permit a bar to operate without alcohol being ancillary to a meal for a maximum capacity of fifteen patrons. The lay bench in allowing the appeal had taken the view that the application would not have an adverse impact on residents. It was only the fourteenth appeal case the Council had lost since 2005.

9.2 Mr Large also informed Members that two applications where appeals had been dismissed and had subsequently reached the Magistrates' Court were Maddox Club, 3-5 Mill Street and Vendome, 85 Piccadilly. Appeals had been lodged by St Martin's Lane Hotel, 42-49 St Martin's Lane and Automat, 33 Dover Street against the respective decisions of the Licensing Sub-Committee following review hearings. The St Martin's Lane appeal hearing was scheduled to be heard in late October and the Automat appeal hearing was scheduled for June. There had been a settlement of appeal between the Council and The Club at The Ivy which had originally wished to operate until

3am but the settlement had agreed 2am. The Council had in effect already conceded that there was an exception to policy as The Club was already operating beyond core hours. A judgement on an application for permission for judicial review challenging the fees charged by the Council for sex establishment licences over the preceding six years was due to be received at the end of April. There had been two street trading cases for Pitch 925 Marylebone High Street and Pitch 570,571,705 and 706 Church Street Market where traders had not paid the necessary fees and had lost their appeals. The de-designation of Pitch 1648 Cranbourn Street had been appealed by the West End Street Traders Association to the Secretary of State for Business Innovation and Skills and this had been dismissed. The Secretary of State had found that the Council had acted in accordance with Policy SS13 in opting for the removal of the site and also found that local authorities should enjoy significant discretion over what evidence is needed to take a de-designation decision and, in any event, there was evidence to justify de-designation in this case.

9.3 **RESOLVED:** That the report be noted.

10. LONDON LOCAL AUTHORITIES ACT 1991 (AMENDED 2000) 'EXEMPTED BODIES'

10.1 Ian Watson, Senior Practitioner Environmental Health (Licensing), introduced a report which provided information on provisions of the London Local Authorities Act 1991 (as amended 2000) to licence Special Treatment Premises. He clarified in response to Members' questions that if an organisational body of health practitioners met the required criteria and submitted the required documentation to the local authority then the local authority had no discretion other than to accept that the organisation would be exempt from the requirement to obtain a special treatment licence. The criteria included that the organisation must have a register of members, have the necessary membership qualifications and experience of the therapy concerned, require its members to hold professional indemnity insurance and have a code of conduct and ethics.

10.2 **RESOLVED:** That the report be noted.

11. LICENSING URGENCY SUB-COMMITTEE REPORTS – 5 JANUARY 2012

11.1 The Committee received a report which advised Members of the Licensing Urgency Sub-Committee decisions on 5th January 2012 relating to amending the fees for Sex Establishment licences and establishing a new fee structure for Sexual Entertainment Venue licences. Officers were asked by Councillor McAllister whether they were satisfied that the breakdown of costs associated with each application type for administration and processing for Licensing and Environmental Health were successfully capturing officers' time spent on the applications. Mr Harrison and Mr Simpkin confirmed that the full cost recovery included hourly rates which took into account corporate costs such as desks, heating and light and also support services. Officers' time was formally recorded.

11.2 **RESOLVED:** That the contents of the 5th January 2012 Licensing Urgency Sub-Committee reports and decisions relating to the Sex Establishment licence fees be noted.

12. LICENSING URGENCY SUB-COMMITTEE REPORT 17 FEBRUARY - RULES OF PROCEDURE GOVERNING SEXUAL ENTERTAINMENT VENUE APPLICATIONS

12.1 The Committee received a report which advised Members of the Licensing Urgency Sub-Committee decisions on 17th February 2012 relating to setting the Rules of Procedure for applications made for Sexual Entertainment Venue licences under the Local Government (Miscellaneous Provisions) Act 1982.

12.2 **RESOLVED:** That the contents of the 17th February 2012 Licensing Urgency Sub-Committee reports and decisions relating to the Sexual Entertainment Venue rules of procedure be noted.

13. LICENSING URGENCY SUB-COMMITTEE REPORT 17 FEBRUARY - ADOPTION OF STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES

13.1 The Committee received a report which advised Members of the Licensing Urgency Sub-Committee decisions on 17th February 2012 relating to the adoption of Standard Conditions which will apply generally to all Sexual Entertainment Venue licences under the Local Government (Miscellaneous Provisions) Act 1982.

13.2 **RESOLVED:** That the contents of the 17th February 2012 Licensing Urgency Sub-Committee report and decision relating to the Sexual Entertainment Venue Standard Conditions be noted.

14. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

14.1 The Chairman commented that the policy recommendations in Licensing Sub-Committee reports gave a somewhat misleading impression as they tended only to recommend refusal. One option was to replace this with 'contrary to policy'. Councillor Bradley and Councillor Caplan stated that they agreed that there needed to be a more concise explanation for each policy recommendation. Mr Large added that there was little point to the recommendations if all they stated was 'recommend refusal'. If an application was contrary to policy a reason needed to be provided for it. He had no problem legally with a comment stating why a policy was not compliant. It was agreed by the Committee that more specific and concise policy recommendations would initially be produced by the Licensing Service in draft licensing reports on an experimental basis and seen by the Chairman of the Licensing Committee for comment.

14.2 **RESOLVED:** That more specific and concise policy recommendations be initially produced by the Licensing Service in draft licensing reports on an

experimental basis and viewed by the Chairman of the Licensing Committee for comment.

15. FUTURE LICENSING COMMITTEE MEETING DATES

15.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 11 July 2012 at 10.00am and Wednesday 14 November 2012 at 10.00am.

16. CLOSE OF MEETING

16.1 The meeting ended at 11.59am.

Chairman

Date