



Minutes

Meeting:

Licensing Committee

Date of meeting:

Wednesday 11 July 2012 at City Hall, 64 Victoria Street, London, SW1E 6QP

Attendees:

Councillors: **Audrey Lewis (Chairman)**
 Ahmed Abdel-Hamid
 Alan Bradley
 Michael Brahams
 Melvyn Caplan
 Nicholas Evans
 Lindsey Hall
 Andrew Havery
 Harvey Marshall
 Patricia McAllister
 Tim Mitchell
 Jan Prendergast
 Aziz Toki

Apologies:

Councillors Jean-Paul Floru and Gwyneth Hampson.

Contact:

Jonathan Deacon
Committee and Scrutiny Officer

Details:

Tel: 020 7641 2783
Email: jdeacon@westminster.gov.uk

1. **DECLARATIONS OF INTEREST**

1.1 There were no declarations of interest.

2. **MINUTES**

2.1 The Committee approved the minutes of the Licensing Committee meeting held on 14 March 2012.

2.2 The Chairman raised two matters with Members of the Committee. The first was in respect of the start of the Summer Hyde Park concerts. It was clear from feedback she had received from residents that particularly those located to the north of Hyde Park had been inconvenienced by noise from the Wireless Festival the previous weekend. There was a steady run of concerts from 13th July onwards, including Bruce Springsteen, Madonna and those taking place during the Olympics. The Chairman stated that those residents who had spoken to her regarding noise emanating from the concerts had not registered their complaints with the Noise Team. She asked Members to encourage residents who comment that they were being inconvenienced by noise from the concerts to contact the Noise Team. This would provide useful information as to where residents were being particularly inconvenienced and if noise was being reported immediately, it was easier to sort out any issues whilst the concert was still taking place. This data would also be valuable in the event that there was a requirement for a further review of the Hyde Park licence. Andrew Ralph, Service Manager – Noise and Licensing, informed Members that there had been some instances of breaches of the specified noise level set out in the conditions of the licence at the previous weekend's concerts and that there had not been full compliance with officers at the sound desk. The Royal Parks' letter to residents had provided the Royal Parks' telephone number and some residents had used this number rather than that of the Noise Team. It was also the case that telephone calls complaining of noise from concerts continued to be received for a number of days after the event. Some Members commented that they had either heard, or had received comments from those who had heard, noise emanating from the concerts. Members noted that the previous weekend had been particularly busy as there had been World Pride Day, concerts and the 10K road race and thanked officers for their work at all hours of the day and night.

2.3 The Chairman also brought to the Committee's attention that a Members-led working group had been established to look at issues relating to the use of tables and chairs outside premises and shisha smoking. She would co-chair this with Councillor Alastair Moss apart from the initial meeting which would be chaired by the Chief Executive, Mike More.

2.4 **RESOLVED:** That the minutes of the meeting held on 14 March 2012 were approved and signed by the Chairman as a true and correct record of the proceedings.

3. MEMBER LICENSING TRAINING

3.1 The Chairman introduced David Matthias QC, who was providing Member Licensing Training at the meeting. Mr Matthias made the following points at the training session regarding the effect of the recent Police Reform and Social Responsibility Act 2011 legislation on the licensing process:

- The Police Reform and Social Responsibility Act 2011 amended certain aspects of the Licensing Act 2003 and had come into force on 25th April 2012. The amendments had a significant overall effect as they empowered the Licensing Authority and the Licensing Sub-Committee. The Licensing Authority was now one of the Responsible Authorities. It was a separate entity from Environmental Health and was able to make relevant representations for new licences, variations and reviews on the grounds of all four licensing objectives. Previously Responsible Authorities had tended to act as guardians in respect of one or two licensing objectives, notably the prevention of crime and disorder in the case of the Police and public safety and the prevention of public nuisance in the case of Environmental Health. The Licensing Authority was also able to instigate reviews and not have to rely on the Police or Environmental Health to do so. One of the purposes set out in the Act for the Licensing Authority to make a representation was that they could intervene if they did not think that other Responsible Authorities were not acting quickly enough. It would be particularly important to operate a strict 'Chinese wall' between those officers on one side who were making judgements on submitting representations such as reviews and those who had responsibility for advising and assisting the Licensing Sub-Committee.
- The definition of interested parties had been abolished and now Responsible Authorities and any other persons could submit representations. There was no specification that any other persons submitting a representation should live within the vicinity of the premises concerned. Representations needed to be relevant so the frivolous or vexatious test was retained.
- Mr Matthias stated that previously under the Licensing Act the Licensing Sub-Committee had been required when considering an application to take a decision that was 'necessary'. Now under the Police Reform and Social Responsibility Act 2011 the Sub-Committee needed to decide what was 'appropriate'. He advised that this had a significant impact as this widened Members' discretion to do what was 'right'. Previously consideration had to be given as to whether the 'right' decision was 'necessary'. He believed that it would now be more difficult for dissatisfied parties to challenge decisions at an appeal. Previously it could potentially have been argued that a more lenient decision that was 'necessary' could have been taken. Now the case had to be made that an inappropriate decision had been taken by the Sub-Committee.

- There had been changes in terms of how Temporary Event Notices ('TENs') were operated. Previously only the Police were able to object on crime and disorder grounds. Now the Police or Environmental Health could object on the grounds that any of the four licensing objectives were not being promoted. Objections by the Responsible Authorities now had to be made by the end of the third working day after a TEN had been received. The Sub-Committee were able as a result of the Police Reform and Social Responsibility Act to impose conditions on a TEN licence provided that the establishment in question already had a premises licence. For instance where a premises licence prohibited outside drinking after a certain hour the Sub-Committee could decide to permit the TEN and require the premises user to abide by this condition for the TEN being considered.

3.2 The Sub-Committee raised a number of points in response to Mr Matthias' training session presentation, including the following:

- The Chairman commented that in the event that the Police were slow to submit a review and the Licensing Authority decided to act, they would still need to obtain the Police's evidence. It was also the case now that the Health Authority were able to make representations. Mr Ralph added that the Licensing Authority had made their first representation for a review (on crime and disorder grounds) and this application was being considered on 27th July.
- Councillor Bradley asked whether consideration had been given to how and when the Licensing Service would make representations. Mr Ralph informed him that the approach was likely to be that his team in Enforcement would make representations in respect of reviews and that the Service Manager for Environmental Health Consultation and Licensing, Deirdre Hayes would be involved in any Licensing Authority representations for other licensing applications. Members took the view that representations should not be submitted for applications across the board by the Licensing Authority. However, as Councillor Mitchell commented, there could potentially be value in the Licensing Authority submitting a representation in order to prevent a settlement being made for a review at the last minute and leading to an unsatisfactory outcome as was considered to be the case with a previous review hearing for Vendome.
- The matter of papers received either the day prior or on the morning of Licensing Sub-Committee meetings was discussed. The Chairman stated that some years previously the Sub-Committee had looked at not accepting late representations. In practice, however, it had been found that there were consequences if Members did not receive all the evidence. If an application was adjourned either to later in the day or to a later meeting it would be inconvenient for residents and lawyers. It would also be more difficult for the Licensing Service to organise so that all parties were present when the application was eventually heard. The most practical power was most likely the threat of adjournment and

reminding lawyers that late representations were not appreciated. Mr Matthias made the point that there was no stipulation in the hearing regulations requiring the Sub-Committee to receive late written representations. It was envisaged that the hearings would take the form of a discussion. It was quite possible to stipulate that written material would not be considered if it was received later than 48 hours prior to the hearing. The Chairman commented that the practical difficulty with that approach was that there could be 10 applications on the agenda with detailed conditions and if negotiations between the Applicant and the Responsible Authorities were not permitted to take place at a later stage the conditions could well be in more of a mess than they were without this provision. Members also emphasized the advantages of having a deadline for representations. Councillor Brahams stated that there was the issue of papers being received the evening before when meetings were taking place, including Council. Often representations were withdrawn on the day of the meeting which could have taken place before an agreed deadline. Councillor Caplan added that the current situation almost encouraged parties to have meetings and discuss matters at a late stage prior to a meeting. If a deadline was in place, Members would be able to read papers in a confident fashion in the knowledge that the papers reflected the state of play at the hearing. Councillor Hall made the point that it would be good discipline to have a cut off point and lawyers were not serving their clients well if parties were bombarded with last minute information. Peter Large, Head of Legal and Democratic Services advised that it was not feasible to disregard information received after a certain point. However, what was required was a disincentive for parties to leave negotiations until a very late stage. A cut off point could be agreed after which an application would be adjourned. If papers were late, it caused Members of the Sub-Committee practical difficulties and they were within their rights not to consider the application until a later time. One option was to bring this approach to the licensing lawyers' attention.

- It was agreed that a one page summary would be put together of the content of the training session.

3.3 **RESOLVED:** That a one page summary be provided to Members of the content of the training session.

4. **COUNCIL'S THERAPIST REGISTRATION SCHEME**

4.1 At the previous meeting of the Committee in March 2012, it had been resolved that a review of the Therapist Registration Scheme would be undertaken by officers and a report be provided to the next meeting in July. Kerry Simpkin, Assistant Service Manager, addressed Members on this point. A number of Members had expressed the view at the March meeting that not only should the proposal be taken forward that those working in licensed special treatment premises who provided lower risk treatments no longer be required to register but that there was also no need to keep the Scheme in place in relation to higher risk treatments. The report in the current agenda papers had provided

a review of the options, including the advantages and disadvantages of retaining the Scheme. It was being proposed that compulsory registration would no longer be a requirement for therapists providing treatments in licensed special treatment premises in Westminster. It was also being proposed that standard conditions would be introduced for special treatment premises licences that would place the responsibility on the licensee to ensure that all special treatment practitioners were suitably qualified. The report set out the effect of removing the therapist registration requirement including reducing the regulatory burden on businesses, removing backlogs and freeing up officer resources to meet the additional statutory demands from Temporary Event Notices and other licensing regimes. The current Scheme was partly funded by the special treatment premises licences through their licence fee. However, this did not cover the full cost of providing the service and the Council was not able to charge therapists an application fee. Mr Simpkin added that there were therapists who wished to have their training and qualifications accredited in order to demonstrate their experience and knowledge and officers were looking at developing a voluntary chargeable therapist accreditation scheme where costs would be recovered.

4.2 The following points were raised in response to Mr Simpkin's introduction:

- In response to a question from Councillor Evans, Mr Simpkin stated it was being proposed that the requirement was being removed for therapists to provide evidence of their qualifications. However, the onus would be on the licensed operator to ensure that the therapist, their employees, were suitably qualified and Environmental Health Inspectors would ensure that standards for ensuring the safety of those treated were being met under the Health and Safety at Work Act.
- Councillor Hall commented that she was aware of a manicurist that had submitted the necessary registration paperwork and was able to operate but that she had not heard back due to the backlogs. Mr Simpkin stated that the Council had received an exceptionally high level of applications as a result of the Scheme and demand for the service had become unmanageable within existing resources.
- Councillor Caplan made the point that if a therapist registration scheme did proceed, there would need to be the ability for officers to manage it within existing resources and the correct fee needed to be set. Currently there was only the scope for the fees to be paid by cheque or postal order and further payment options would be required, including the option to pay online. Mr Simpkin responded that there would be the capacity for more varied forms of payment options going forward.
- A number of Members supported the concept that if any scheme was implemented there should be a full cost recovery. Councillor Mitchell added that a scheme would need to be efficient and a future report should provide details of costs and timescales that would result from amendments to the current Scheme.
- Members had some differing views on the need for a registration scheme. Councillor McAllister expressed the view that the accreditation process was an important part of the practitioners' business and should be retained. Full cost recovery was vital and there should be flexible

payment options. Councillor Bradley and Councillor Havery both questioned the need for an accreditation scheme. Councillor Bradley made the point that just because it was liked by the practitioners did not mean that these were grounds for having to proceed. Councillor Havery added that if practitioners were intent on receiving accreditation they could examine other avenues such as the University of Westminster.

4.3 It was agreed that a detailed set of proposals on this issue would be included in a report for the next meeting of the Licensing Committee in November, taking into account the comments of Members.

4.4 **RESOLVED:** That a detailed set of proposals in respect of the Council's Therapist Registration Scheme be included in a report for the next meeting of the Licensing Committee in November, taking into account the comments of Members.

5. **GAMBLING POLICY**

5.1 Chris Wroe, Licensing Policy & Strategy Manager, introduced the item. He stated that the Council was required to review its gambling policy every 3 years. The current policy would be effective until January 2013. The consultation process would begin shortly for the review of the policy. This would conclude on 14 September 2012. Mr Wroe commented that generally not too many issues had arisen for the Council as a result of the Gambling Act. The volume of applications was relatively small compared with the Licensing Act 2003 applications. Betting shops more than any other types of gambling premises had caused some concern. There had been objections to applications for betting shops and they had therefore required consideration by the Licensing Sub-Committee. The Gambling Act regime was a prescriptive one and did not give the Local Authority much discretion to refuse applications for gambling premises. There was a presumption to grant.

5.2 Mr Wroe explained that four areas had been identified in the consultation papers which were matters for debate and where policy could potentially be strengthened if the Council wished to control betting shop provision. The first was the density or concentration of betting shops. There had been strong representations objecting to applications within Chinatown and in Harrow Road. There were four or five major betting shop providers and they all wished to be in the same areas. There was not the scope within the Act to refuse applications on the grounds that there were already enough betting shops to meet demand. The second area was the opening hours. There was a default condition in the provision of the Act which applied when granting a betting shop for opening hours between 7am and 10pm. It was open to the applicant to apply to remove the restrictions in respect of the operating hours and for the Sub-Committee to vary these. It could be stated as a matter of policy that this default condition would not be waived. 14 applications had been considered to date for betting premises to open until midnight. There was also the option to make a decision according to specific areas such as the designated stress areas taking into account when people disperse. The third area for consideration was Harrow Road and to what extent crime and

disorder grounds could be taken into account. The licensing objective in the Gambling Act was to prevent 'gambling from being a source of crime or disorder, being associated with crime and disorder or being used to support crime and disorder'. This indicated that the grounds being considered related to the gambling not the premises itself. The question was whether matters such as the congregation of people outside betting premises could be taken into account on the grounds that it was associated with premises providing gambling. Counsel opinion was being sought on this issue. Finally, the fourth area was primary use. There was an expectation that a betting shop should primarily operate as a licensed betting shop although these premises were permitted to include a certain number of gaming machines. Some of the betting shop premises, however, had minimal betting facilities and the emphasis was on gaming machines which were particularly attractive to gamblers. There was also the question of whether operators were looking at lengthening the hours that betting shops were open in order to ensure increased use of the gaming machines. The Council's gambling policy could potentially be more explicit in terms of requiring betting shops to provide betting facilities at all times whilst the shops were operating.

5.3 The Chairman stated that she felt that there was a definite need for a thoroughly researched gambling policy which would provide evidence on public nuisance or crime and disorder. Councillor Mitchell recommended that the consultation process also include the parties that had submitted representations objecting to previous gambling applications in order to receive feedback. It was agreed that the Council needed to take a practical view on what could be defended in terms of the gambling policy. The fact that there were vulnerable persons was not a defensible reason to make betting unavailable to others. Members, including Councillor Mitchell and Councillor Caplan, requested that whilst taking a practical approach in the Council's gambling policy the Council examine the scope within the policy to address the pure use of gaming machines as opposed to betting facilities, the hours the premises operate and the proliferation of people congregating outside the betting premises, particularly in areas such as Harrow Road or Hall Park Estate.

5.4 **RESOLVED:** (i) That the parties that had submitted representations objecting to previous gambling applications be included in the consultation process; and
(ii) That the contents of the report be noted.

6. **SEXUAL ENTERTAINMENT VENUES – VARIATION TO STANDARD CONDITIONS**

6.1 The Committee received a report advising of progress in determining applications for sexual entertainment venues ('SEV') under transitional arrangements and also advising of proposed variations to standard conditions which applied generally to all sexual entertainment venues, following representations which had been made by those representing the applicants during the hearings. Mr Wroe informed Members that it had become clear that there was scope to provide greater clarity so that standard conditions 6

and 16 related to the provision of sexual entertainment and the wording of standard condition 21 was unambiguous. The consideration of standard conditions was a separate process from that where individual applicants for SEVs requested to waive certain standard conditions because they did not believe that they were applicable due to their specific circumstances.

6.2 The Chairman stated that the initial SEV applications had been heard over a 2 day period on 11th and 12th June and that the Sub-Committee considering them had met on a separate day to finalise their decisions, including the conditions to apply to the licence. There had been representations from the applicants to amend the standard conditions but Members of the Sub-Committee had felt strongly that the original wording of the conditions should be retained unless there were clear reasons for not retaining it. This would assist in maintaining a firm policy regarding sexual entertainment venues whilst allowing those not previously causing any problems to operate as they had before. The number of licences was discussed and the Chairman made the point that there was a clause in the SEV policy to have no more than 25 venues. In practice 17 SEV applications had been received initially and a further 2 were being considered later in the month. It was open to the Committee to reduce the number from 25 at a later date. In response to a question from Councillor Brahams, Mr Wroe confirmed that if the amended standard conditions were approved by the Committee they would be accessible on the Council's website and would apply to all sexual entertainment venues. He added that all these premises' licences would come into force from 1 October 2012 and they would be renewable on an annual basis. Officers were likely to review the SEV process during the year and report back in a year's time. The Committee approved the amendments in the report.

6.3 **RESOLVED:** That the variation of standard conditions 6, 17 and 21 detailed in paragraph 3.7 of the report be approved and that a revised set of standard conditions be adopted with immediate effect.

7. CITIZENS ADVICE BUREAU LICENSING PROJECT UPDATE

7.1 Mr Wroe provided a brief introduction, advising Members that the report in the papers included the annual report of the Citizens Advice Bureau Licensing Project and also that a review of advice services was currently being undertaken by the Council including the public consultation which was open until 22 August 2012. The CAB Licensing Project was included within the review. Mr Richard Brown, the specialist licensing solicitor who was responsible for the advice service at the CAB Licensing Project gave a presentation on the work of the Project.

7.2 Mr Brown stated that he had produced an annual report for the CAB Licensing Project for each of the three and a half years he had been providing the service, including the current annual report from 1 April 2011 to 31 March 2012 which had been included in the agenda papers. He had also produced a three year report to 31 March 2011. The Licensing Advice Project provided a free, independent, impartial and confidential information, advice and

representation service to residents (including residents' associations and amenity societies). The Project's work included casework such as the representations received by the Licensing Sub-Committee, responses to consultation documents, written articles and updates to the website. Since he had commenced the role in 2009, Mr Brown had stimulated interest and increased the profile of the Project, attending meetings such as the Entertainment Forum and developing a presence at the Institute of Licensing. The website was useful because residents were able to have some understanding on how the licensing process worked and potentially be able to make representations purely from this information. There was significant downloading of the documents on the website.

7.3 Mr Brown explained to Members that rather than residents going to the CAB office, there was a practical benefit if he visited the residents and had an idea of their individual circumstances in order to be able to provide advice. There tended to be 3 stages to the advice he provided. The first stage was to provide some initial information and in many cases no further action was required. The second stage was to provide more detailed advice or assistance and the third was to advise on a representation from residents and represent them at a Licensing Sub-Committee hearing. There were case studies in the annual report which referred to the three stages of the work. The benefits to residents and the Local Authority were set out in the report and included within the appendices was a client feedback survey. There had been contact with other boroughs to expand the service. Discussions had taken place with Camden in 2009/10 but due to the economic situation, the matter had not been taken further. Mr Brown made the point that he was open to widening the scope of his work to include gambling and sexual entertainment venues applications, which were not regularly considered by the Licensing Sub-Committee, in addition to licensing act applications. It had been clear that there had been a misunderstanding on the part of some of the residents who had represented themselves as to the relevant grounds for opposing sexual entertainment venues applications.

7.4 The Chairman recommended that the Committee formally thank Matthew Bennett of the Soho Society who acted as the chairman of the steering group for the Project. She also recommended that the service was commended to the Cabinet Member for Community Services, that the Committee made a formal representation to the review of advice services and that the annual report was circulated to amenity societies. There was a concern that the service was not used often enough by those who could benefit from it. It was agreed by Members of the Committee that the service provided was of considerable benefit and was good value for the money that was allocated to the Project by the Council. Members endorsed the recommendations made by the Chairman. There was a definite benefit as representations were made more relevant as a result of Mr Brown's advice. Councillor Mitchell made the point that Ward Members would also have been required to attend a lot more Sub-Committee meetings, particularly those in St James's and the West End, if residents did not have access to Mr Brown. Councillor McAllister commented that she had received good feedback from residents who had felt that the service was helpful and they had been listened to. Members of the

Committee also agreed that it was a good idea for Mr Brown to advise on gambling and sexual entertainment venues applications in addition to licensing act applications.

- 7.5 **RESOLVED:** (i) That the Committee formally thank Mr Matthew Bennett who is the chairman of the steering group for the CAB Licensing Project;
- (ii) That the service provided by the CAB Licensing Project be commended to the Cabinet Member for Community Services;
- (iii) That a formal representation be submitted by the Licensing Committee in response to the review of advice services being undertaken by the Council;
- (iv) That the CAB Licensing Project annual report be circulated to amenity societies; and,
- (v) That the contents of the report be noted.

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

- 8.1 Deirdre Hayes, Service Manager for Environmental Health Consultation and Licensing, introduced the report. The proposed fee structure for loudspeaker consent took into account time spent by officers in administering the application. The unopposed applications would be dealt with under delegated powers and the fees would be reduced from those set previously. There would be a significant increase in the fees for opposed applications.
- 8.2 Councillor Caplan stated that he agreed with the concept of the fees being based on officer time and effort and that there was therefore a re-rating of the cost of opposed applications. He queried, however, how officers proposed to collect the fees if an application was opposed. It would be awkward in a scenario where an initial fee was required for the application and then applicants were told at a later stage that due to an objection to the application the application would only proceed if they paid a further amount. In this instance the applicants could refuse to pay the additional fee. Ms Hayes made the point that officers would be likely to know how contentious a loudspeaker application would be based on the location where it was due to take place. Mr Large advised that the applications needed to be determined within 21 days of receipt and that if challenged, the Council needed to be able to justify the fees. The Committee approved the fee structure set out in the report.
- 8.3 **RESOLVED:** That the proposed fee structure as set out in the report be approved.

9. APPEALS

- 9.1 Mr Large provided Members with an update of the position in respect of licensing appeals since the previous meeting of the Committee in March. He

advised that an appeal had been withdrawn two days prior to the commencement of the full hearing by the Appellants for Automat, 33 Dover Street and costs had been awarded to the City Council. Appellants for Maddox Club in Mill Street and Vendome in Piccadilly were challenging the legality of decisions made by magistrates, having had appeals dismissed. Upcoming appeal hearings included Altitude 360 in Millbank Tower which was scheduled for 12-16 November 2012 and The Windmill in Great Windmill Street which was scheduled for 20 August 2012. An application for permission to appeal in relation to certain aspects of the sex establishment licensing fees decision had been submitted by the Council and filed with the Court of Appeal, following refusal of permission by the High Court.

9.2 The Chairman requested that Members were notified at Licensing Committee meetings of upcoming scheduled hearings for reviews of premises licences applications. Mr Ralph stated that the currently scheduled review hearings were Shakespeare Tavern on 27 July, Metra and Aura were scheduled for the middle of August.

9.3 **RESOLVED:** (i) That the Committee be notified at Licensing Committee meetings of scheduled review hearings; and

(ii) That the report be noted.

10. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

10.1 No additional matters were raised for consideration.

11. FUTURE LICENSING COMMITTEE MEETING DATES

11.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 14 November 2012 at 10.00am and Wednesday 20 March 2013 at 10.00am.

12. CLOSE OF MEETING

12.1 The meeting ended at 12.41pm.

Chairman

Date