



City of Westminster

Licensing Committee

Item No:	6
Date:	20 November 2013
Classification:	For General Release
Title of Report:	Licensing Appeals
Report of:	Head of Legal and Democratic Services
Wards involved:	Not applicable
Policy context:	A business like approach
Financial summary:	None
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1. Summary

1.1 This report provides a summary of recent appeal results.

2. Recommendations

2.1 That the report be noted.

3. Background

3.1 In total, 453 appeals have been received under the Licensing Act 2003. To date, 446 appeals have been heard / settled / withdrawn:

- 15 allowed
- 11 allowed only in part
- 52 dismissed
- 203 withdrawn
- 165 settled

4. Licensing Act 2003 Judicial Reviews / Appeals

4.1 Break Point, 8 William IV Street WC2

The premises operate as a convenience store located at 8 William IV Street WC2. By application received on 11 January 2013, the Metropolitan Police sought to review the premises licence on the grounds of prevention of crime and disorder and public safety. The review was instigated following an incident on 31 December 2012 whereby the premises were found to be selling alcohol beyond its permitted hours (Mon-Sat 23.00 and Sun 22.30) despite having been warned by the Police earlier in the day not to sell beyond permitted hours. The Metropolitan Police believe that the DPS tried to mislead them about the hours permitted for the sale of alcohol and disregarded their warnings not to sell alcohol beyond the hours permitted by the premise licence. The application was considered by the Licensing Sub-Committee on 14 March 2013 and decided to i) remove the Designated Premises Supervisor; ii) exclude the sale of alcohol from the scope of the premises licence for a period of 3 months to give sufficient time to put the business on a new footing, including re-training or locating suitable staff.

Notice of appeal was received against the decision of the Sub-Committee. The full hearing of the appeal took place on 18 and 19 September 2013. Judgment was reserved and handed down in late October. The District Judge refused the appeal awarding full costs of £17,806.40 to Westminster City Council.

4.2 Revolution, 1 St Anne's Court, W1

Revolution is a ground floor bar located at 1 St Anne's Court, W1. The premises currently benefits from a premises licence permitting Sale of Alcohol on Monday to Saturday to 23.00 and on Sunday to 22.30 and Late Night refreshment to 23.30. An application to vary the premises licence was received on 6 March 2013. The variation sought to 1) permit performance of dance on Monday to Thursday from 10.00 to 23.30, Friday to Saturday 10.00 to 00.30 and on Sunday from 12.00 to 22.30; 2) extend the terminal hour for late night refreshment from 23.30 to 00.00; and 3) to extend the terminal hour for the sale of alcohol on Monday to Thursday from 23.00 to 23.30 and on Friday to Saturday from 23.00 to 00.00 and 4) replace a number of conditions from the premises existing premises licence. Representations against the application were received from Environmental Health, the Metropolitan Police, the Soho Society, five local residents and one local business. A Licensing Sub-Committee hearing was held on 13 June 2013 to consider the application. At the hearing the applicant's representative advised that the application had been amended to vary the licence so

as to extend the hours for late night refreshment and sale of alcohol to core hours and to withdraw the application to permit regulated entertainment. Having considered the application and representations made in writing and at the hearing, the Sub-Committee refused the application on the grounds that it did not promote the Licensing Objectives. Furthermore, the Sub-Committee were satisfied that if granted, the application would have the likely effect of adding to the cumulative impact in the West End Stress Area and would increase the likelihood of instances of public nuisance and crime and disorder.

Notice of appeal was received against the Sub-Committee's decision. The full hearing of the appeal had been scheduled for 10th to 12th December 2013. The Appellant's representatives have, however, now advised of their instruction to withdraw the appeal. Costs are being sought.

4.3 28/50, 17-19 Maddox Street W1

The premises operate as a wine led restaurant. The premises held a licence which was transferred from Maddox Properties Ltd to 28/50 Mayfair Limited. An application for a new premises licence was received on 26th February 2013. The applicant sought the same licensable activities and timings as those in the existing licence (sale of alcohol on Mon-Thur to 23.30, Fri-Sat to 00.00 and Sun to 22.30; late night refreshment Mon-Thur to 23.30; Fri-Sat to 00.00). However, the existing licence restricted the sale of alcohol as ancillary to a table meal and the application sought permission to have up to 12 persons at the bar to be able to consume alcohol without the need of a table meal. Representations against the application were received from the Environmental Health Service and one local resident.

The application was considered by the Licensing Sub-Committee on 18 April 2013. The Sub-Committee had regard to the applicant's submission and the objection maintained by the Environmental Health Service and refused the application on the grounds that the application was not an exception to the stress area policy.

Notice of appeal has been received against that decision. A proposed offer of compromise was put forward by the Appellant's. That proposal was referred back to the Licensing Sub-Committee for consideration and authority was granted to settle the appeal on the basis of 9 persons being allowed to consume alcohol at the Bar to 9pm having also ordered from the bar snacks menu.

4.4 Marks and Spencer, Ground Floor, 10 Cardinal Walk SW1

Marks and Spencer is a supermarket located on the ground floor of 10 Cardinal Walk SW1. The premises currently benefits from a premises licence permitting the sale of alcohol (On the Premises) on Monday to Saturday from 10.00 to 23.00 and on Sunday from 12.00 to 23.30 and the sale of alcohol (Off the Premises) on Monday to Saturday from 08.00 to 23.00 and on Sunday from 10.00 to 22.30. An application to vary the premises licence was received on 8 March 2013. The variation sought to extend the commencement time for the sale of alcohol (Off the premises only) on Monday to Friday from 08.00 to 07.30. Representations against the application were received from Environmental Health and the Metropolitan Police. The Licensing Sub-Committee considered the matter on 2 May 2013 and refused the variation application on the grounds that it would undermine the licensing objectives, in particular the prevention of crime and disorder and prevention of public nuisance objectives at this location.

Notice of appeal was lodged against the decision of the Sub-Committee. Following advice from Counsel, the matter was referred back to Licensing Sub-Committee for consideration. The Sub-Committee agreed that the appeal should be settled by consent, as applied for, with the addition of two conditions.

4.5 Shakespeare Tavern, 99 Buckingham Palace Road

By application received on 18 April 2013, the premises management team of the licensing department applied to review the premises licence for the Shakespeare Tavern located at 99 Buckingham Palace Road SW1 on the grounds of prevention of crime and disorder. This latest review of the premises licence followed a long history of non-compliance with the conditions on the premises licence and concerns raised by police. A previous application for review was brought by the premises management team on 27 June 2012 on the grounds of crime and disorder and the Licensing Sub-Committee modified the conditions on the premises licence and the terminal hours for sale of alcohol was reduced to 1am in the basement. Since the last review, the premises continued to be associated with unacceptable levels of crime and disorder. The Licensing Inspectorate are of the view that the premises are not well run and there is evidence that the level of alcohol fuelled crime and disorder is exacerbated by the failure of the licence holder to comply with conditions attached to the premises licence.

Representations in support of the application for Review were received from the Environmental Health Service, one local resident and one residents association.

The Licensing Sub-Committee considered the matter on 20 June 2013. The Sub-Committee considered that the Licensing Inspectorate had been correct in their assessment that since the last review application heard by the Licensing Sub-Committee in July 2012 the premises had continued to be associated with unacceptable levels of crime and disorder. Members were also of the view on the basis of the evidence received that they could not have any confidence in the way the Shakespeare Tavern was being operated as there had been no clear improvement since the first review hearing. This took into account the management's poor response to incidents that arose, their failure to address the high number of thefts which took place at the premises and their inability to demonstrate that they were able to comply with the conditions set out on the premises licence when licensing inspectors visited the pub and the Police requested CCTV footage.

The Sub-Committee considered that it was appropriate at the second review hearing to remove the Designated Premises Supervisor, Mr Deans and reduce the hours on the premises to within the Council's Core Hours policy. Particularly taking into account the unfortunate incident on 9 March 2013 when the victim had been struck with a glass at the back of the head, the Sub-Committee attached the condition that polycarbonate vessels would be used at the premises at all times. Taking into account the lack of security at the premises, the Sub-Committee attached the condition that a minimum of 1 SIA licensed door supervisor shall be on duty at the premises at all times. There would be a minimum of 2 SIA licensed door supervisors on duty at the premises from 20:00 hours until the close of business. The Sub-Committee were also of the view that it was appropriate to formally attach to the licence the conditions proposed by the Licensee that notices would be placed on every table in the premises for patrons to take particular care of their bags and belongings and that the Licensee would carry out regular assessments of risk in connection with football matches taking place in the capital and liaise with the Police accordingly.

Notice of appeal was lodged against the Sub-Committee's decision and a date for the hearing of the appeal is scheduled for 2nd to 4th December 2013.

4.6 Starbucks, Unit 28 Trocadero, 13 Coventry Street W1

On 21 February 2013, the licensing service received an application for a new premises licence for Starbucks at Unit 28, Trocadero, 13 Coventry Street, London, W1. The application sought to provide late night refreshment on Monday to Sunday from 23.00 to 01.00.

Representations against the application for a new premises licence were received from the Environmental Health Service and the Metropolitan Police Service.

The Licensing Sub-Committee considered the matter on 1 August 2013. The Sub-Committee heard from the Environmental Health Service who explained why they had suggested conditions. The applicants had, however, not contacted them to discuss the application. PC Jim Sollars explained that the premises had not previously thought they needed a separate licence from that held by the Trocadero Centre. Whilst no crime and disorder had been reported on these premises they were in the stress area and there was a large amount of crime and disorder in the area. The applicants were not present, and the Licensing Service advised that the applicant wished the matter to be heard.

The Sub-Committee refused the application on the grounds that there was no special case made to deviate from policy in the stress area.

An appeal has been lodged against the Sub-Committee's decision. A date for the full hearing has been scheduled for 24 and 25 February 2014 at Westminster Magistrates' Court.

4.7 Manbar, 79 Charing Cross Road WC2

By application received on 30 May 2013, the Premises Management – Licensing Service applied to review the premises licence of Manbar, 79 Charing Cross Road WC2. The review was brought on the grounds of the prevention of public nuisance arising from the playing of live and recorded music.

Representations in support of the application for Review were received from Environmental Health and two local residents.

The application was considered by the Licensing Sub-Committee on 18 July 2013. The Sub-Committee stated that it was clear that the real nuisance was being experienced which needed to be resolved. The Sub-Committee decided to take up the licensee's offer during the hearing to investigate, diagnose and resolve the issue of noise escape. The Sub-Committee did not consider that there had been adequate levels of supervision by management at the premises to address the 3 incidents of statutory noise nuisance experienced by local residents in December 2012 and February 2013. The Sub-Committee, taking into account concerns relating to the noise nuisance and also the licence holder's offer to address the problem, attached two conditions that there would be no regulated entertainment at the premises until the noise nuisance had been investigated, diagnosed and resolved to the satisfaction of the Environmental Health Service and that for the duration of the period that regulated entertainment is excluded, there would be no amplified live music play at the premises. There would as a result be a modification of the conditions on the existing licence.

Notice of appeal was lodged by the licensee and the full hearing of the appeal is scheduled for 7th, 8th, 9th and 10th April 2014 at Westminster Magistrates' Court.

5. Judicial Reviews / Case Stated

5.1 Aura, 48-49 St James's Street SW1

Aura is a basement nightclub located at 48-49 St James's Street SW1. This matter is concerned with an application by the Metropolitan Police Service for a Review of the premises licence of Aura, 48-49 St James's Street SW1. The application was made on the grounds of the prevention of crime and disorder, public safety and the prevention of public nuisance. The Police stated that they had been trying to work with the management of the premises to address the incidents that had been occurring within and outside of the premises but despite their efforts there had been no long term visible effect on the reduction of crime and disorder. The Police therefore sought the revocation of the licence.

Representations in support of the application for review were received from the Licensing Authority, Environmental Health, one local resident and the St James's Conservation Trust.

Having considered all of the papers before them and heard from those present at the meeting, the Licensing Sub-Committee decided not to hand down a decision immediately but to advise parties of the decision in writing as soon as possible. On 22 August 2012, the decision of the Licensing Sub-Committee was sent to all parties. The Sub-Committee decided to remove from the licence the unrestricted playing of recorded music and instead permit it only between the hours of 09.00 to 03.00 on Monday to Sunday. The Sub-Committee also imposed a number of additional conditions including no admittance to the premises after 00.00.

Notice of appeal was lodged by the Appellant's against the decision of the Sub-Committee. The hearing of the appeal took place over 7 days between 25 February and 5 March 2013 before District Judge Fanning. The District Judge handed down a judgment dismissing the appeal in April.

The appellant applied for permission to judicially review the District Judge's decision to dismiss the appeal, on the basis that his decision was not supported by the evidence and was perverse. He also applied for, and obtained, a stay of the District Judge's decision, pending determination of the application. The application for a stay was granted by the High Court without the City Council having been given an opportunity to make representations. At a hearing in the High Court on 31 October before Blair J, the application by the appellant for permission for judicial review and the City Council's application that the stay be lifted were both considered. The Court refused permission and lifted the stay, so the conditions imposed by the Sub-Committee have finally come into effect. The City Council was awarded its costs.

The costs of the hearing in the Magistrates Court are now also being sought.

5.2 Vendome, 85 Piccadilly W1 – Judicial Review & Case Stated

Vendome was a basement nightclub located at 85 Piccadilly W1. Further to the dismissal, on 7 November 2011, of the two appeals in respect of the above premises against the 1) revocation of the licence and 2) refusal to transfer the licence, a request was made by the Appellant's to the Magistrates' Court for the District Judge to state a case for the opinion of the High Court. The Magistrates' Court issued its final case stated which was referred to the High Court.

In addition to the case stated, the Claimant's also lodged an application for permission for judicial review of the decision.

Having considered both matters on papers, the High Court advised parties that a half day hearing would take place to consider whether the Claimants should have permission to apply for Judicial Review and whether the case stated application should be remitted to the District Judge.

That hearing took place at the High Court in the afternoon of 18 September 2012 before Mrs Justice Lang. David Matthias QC represented the City Council. Gerald Gouriet QC represented the Claimants. Having heard from both parties and considered the written submissions, Mrs Justice Lang advised that her decision was to refuse permission to appeal by way of Judicial Review. The City Council were awarded their costs of filing the acknowledgement of service in the sum of £5,415.18. Mrs Justice Lang then moved on to deal with the application by E&A for appeal by way of case stated. She ordered that the case stated by the District Judge be returned to him to amend in accordance with her directions so as to include additional facts and evidence as to how he arrived at his decision. The District Judge will have 28 days in which to amend his Judgment in accordance with the directions of Mrs Justice Lang.

The District Judge has restated his case and answered the questions posed by Mrs Justice Lang the case stated has been referred back to the High Court. A hearing has now been arranged in May 2014 in the High Court to determine the matter.

5.3 Ida Perotti – Application for Permission for Judicial Review

This is a renewed application for permission to judicially review the decision of the City Council not to instigate a review of the premises licence of Jetlag Bar at 125 Cleveland Street, London. The purported claimant in this case is a 95 year old Italian lady who does not read or write any English. The actual claimant in this case is her son Mr Angela Perotti, who is on the court's list of vexatious litigants and is, as a result, forbidden from issuing civil proceedings in any court in England and Wales without the permission of the High Court.

Permission for Judicial Review was refused on the papers by the High Court in August 2012. In refusing permission, Mr Justice Edwards-Stuart described the application in the following terms:

“This application is completely misconceived and is therefore totally without merit. It is also an abuse of the process of the court.”

An oral hearing in the Administrative Court was held on 18 December 2012 before Mr Justice Underhill. Mr Perotti represented his mother at the hearing, his mother was not in attendance. Isabella Tafur represented Westminster City Council. At the outset of the hearing, Mr Perotti applied to the Court for an adjournment to enable his mother to seek legal representation. That application was refused and the hearing continued. Having heard in some detail from Mr Perotti, Mr Justice Underhill refused permission to appeal and ordered costs against Mr Perotti personally.

Mr Perotti applied to the Court of Appeal for permission to appeal against the refusal of the application for adjournment and against the costs order made against him. An Order of the Rt. Hon. Lady Justice Rafferty has now been received refusing permission as being totally without merit and stating that Mr Perotti may not request the decision be reconsidered at an oral hearing.

5.4 Sex Establishment Licensing - Fees

The challenge took the form of a judicial review brought by Mr Timothy Hemming, trading as Simply Pleasure Ltd, and six other long standing licensees of sex establishments in Westminster, challenging the legality of the fee charged by the City Council for a sex establishment licence in 2011/12 (£29,102). The claim was made on two grounds. Firstly it was said that the Council had never lawfully set a fee for

2011/12. Secondly it was said that the amount of the fee was unlawful because it contained an element reflecting the cost of enforcing the sex establishment licensing regime.

The case was heard in the High Court over two days in March, both sides being represented by Leading Counsel. The Court gave judgment on 16 May, upholding the claim on both grounds.

An application for permission to appeal on the Services Directive issue, and costs, was filed with the Court of Appeal, following refusal of permission by the High Court. The Court of Appeal granted permission to appeal and the matter was heard on 14 January 2013.

Following the hearing, the parties were invited by the Court to make further written submissions on several issues, including whether it would be appropriate for the Court to refer the case to the European Court of Justice. Both parties made further written submissions

The Court handed down judgment on 24 May. The City Council's appeal on both the Services Directive issue and on costs was dismissed. An appeal on a third point, relating to the way in which fees for past years should be calculated, was allowed. The Council was ordered to pay 90% of the claimants costs of the appeal, and the claimants were ordered to pay 10% of the Council's costs. The Council's application for permission to appeal to the Supreme Court was refused.

An application has now been lodged to the Supreme Court itself for permission to appeal. Submissions in support of the Council's application for permission to appeal have now been filed by the Architects Registration Board, the Bar Standards Board, the Solicitors Regulation Authority, the Law Society, the Farriers Registration Council, the Care Quality Commission and the General Council of the Bar. A decision as to permission is now awaited.

5.5 Lane Bednash (as administrator of Le Pigalle Limited) and David West

An application for permission to bring a claim for Judicial Review has been received from the Lane Bednash (administrator of Le Pigalle Limited) and David West Jnr.

The application relates to the refusal of the Council to treat a transfer application made by the administrators of Le Pigalle Limited as valid. The transfer application was made by the administrators in order to prevent the existing licence lapsing following the insolvency of Le Pigalle Limited. Such an application must be made within a period beginning with the day on which an interim authority notice was received by the licensing authority and ending three months after that date. The issue arising in the claim is whether the transfer application was received within that period, and if not whether the licensing authority has any discretion to extend the time limit.

Detailed grounds of response opposing the grant of permission for judicial review were filed with the Administrative Court. An Order of Mr Justice Baker has now been received refusing permission for Judicial Review and confirming that "...As the consequence of the failure to make a transfer application within the interim authority period is that the premises licence lapses, it is unarguable that the defendant retained the power to grant the transfer". The Court further ordered that the Claimant pay the full costs of the City Council. The Claimant's renewed their application for permission which was considered at an oral hearing on 11 September. Mrs Justice Lang granted permission and a date for the full hearing is awaited.

6. Legal implications

6.1 There are no legal implications for the City Council arising directly from this report.

7. Staffing implications

7.1 There are no staffing implications for the City Council arising directly from this report.

8. Business plan implications

8.1 There are no business plan implications arising from this report.

9. Ward member comments

9.1. As this report covers all wards, comments were not sought.

10. Reason for decision

10.1 The report is for noting.

If you have any queries about this report or wish to inspect any of the background papers please contact Peter Large on 020 7641 2711; email: plarge@westminster.gov.uk

Background Papers

- None.