



City of Westminster

Minutes

Meeting:

Licensing Committee

Time and date of meeting:

**10:00 hours on Wednesday 20 November 2013 at
City Hall, 64 Victoria Street, London, SW1E 6QP**

Attendees:

Councillors:

- Audrey Lewis (Chairman)**
- Ahmed Abdel-Hamid**
- Heather Acton**
- Alan Bradley**
- Michael Brahams**
- Susie Burbridge**
- Melvyn Caplan**
- Nicholas Evans**
- Gwyneth Hampson**
- Andrew Havery**
- Patricia McAllister**
- Tim Mitchell**
- Jan Prendergast**

Apologies:

Councillors Jean-Paul Floru and Aziz Toki.

Contact:

**Jonathan Deacon
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1. DECLARATIONS OF INTEREST

- 1.1 There were no declarations of interest.

2. MINUTES

- 2.1 The minutes of the Licensing Committee meeting held on 26 June 2013 were agreed as a correct record and were signed by the Chairman.
- 2.2 The Chairman welcomed Councillor Heather Acton to the meeting. Her appointment to the membership of the Committee had been confirmed at Council on 13 November.

3. LATE PAPERS TO LICENSING SUB-COMMITTEE

- 3.1 The Committee considered a report regarding arrangements designed to prevent the late submission of papers to Licensing Sub-Committee hearings. The report had been prepared in response to specific concerns on this particular issue from some Members of the Committee. Steve Harrison, Operational Director for Premises Management who introduced the report, stated that it was proposed that the Licensing Service would ask applicants and agents to submit papers by midday on the Monday before the usual Thursday hearing. They would be made aware that Members may be minded to adjourn an application should they receive late papers. It was hoped in some cases that this would prompt applicants to submit papers at an earlier point in the week as they would not want their application to be adjourned or delayed.
- 3.2 The Committee asked for a legal view on this matter. Peter Large, Head of Legal and Democratic Services, advised that Members of Licensing Sub-Committees were legally entitled to adjourn or, alternatively in appropriate cases, proceed and not allow late evidence to be heard. It would need to be made clear to all parties not just the applicants that there was the risk of adjournment and that late evidence was likely to be disregarded.
- 3.3 Members of the Committee were agreed that it was prudent to proceed with the arrangements set out in the report such as the Monday deadline for receipt of papers and then review how they were working over the following six months. A further report would then be produced, assessing the position at the Committee meeting in July 2014. Councillor Evans commented that an earlier deadline might concentrate the minds of applicants and the Responsible Authorities so that if they were likely to reach agreement on an application this could potentially occur at an earlier stage and prevent last minute decisions being taken under delegated authority. Members agreed that each case of late submissions should be assessed before taking a decision as to whether to adjourn or disregard evidence. Councillors Brahams and Burbridge made the point that there were alternatives such as an application being heard after the other applications on the agenda at a Licensing Sub-Committee meeting if submissions were received late. Councillor Havery

stated that he would only have concerns about an adjournment if there was a cost to the Licensing Authority as a result of the delay.

3.4 Councillor Bradley stated that he was content with the proposals and added that the introduction of a procedure which would require the applicant to submit an updated version of the Appendix D conditions where the applicant has been negotiating with the Responsible Authorities after the report is published was particularly helpful. Councillor Mitchell considered that it would be even more useful if Appendix D was in table form with the document setting out what was originally proposed and then tracked changes displaying the proposed deletions and additions since. He made the point that sometimes it required the Legal Adviser or Policy Adviser to examine exactly what changes had been made so that they were not missed. Councillor Caplan advised that this was where the new technology, which was being installed in the committee rooms, would be particularly helpful. The documents could be shown on the screens rather than Members having to rely purely on a number of separate sheets of paper that had been submitted during the week leading up to the Sub-Committee meeting.

3.5 **RESOLVED:** (i) That the arrangements set out in the report be approved; and,

(ii) That the arrangements set out in the report be reviewed over the next six months and a further report be submitted to the Committee in July 2014.

4. EFFECTIVE MANAGEMENT OF PORTRAIT ARTISTS AT SUITABLE AND APPROPRIATE TRADING LOCATIONS

4.1 A Cabinet Member Report would be sent to the Cabinet Member for Business, Skills and Housing seeking approval for proposals ensuring effective management of portrait artists in suitable and appropriate trading locations. Members of the Committee's views on the proposals were sought prior to the Cabinet Member Report being submitted to Councillor Astaire. Mr Harrison gave a brief summary of the report. The portrait artist scheme operating in Leicester Square had been formally reviewed during the last twelve months with a view to deciding whether there was a future for portrait artists there and how such a scheme should work. The results of the pilot scheme suggested that the presence of the portrait artists had not impacted on the movement of pedestrians or added to crime and disorder. It was the officers' conclusion following the pilot scheme that with the modernisation of the scheme pitches should be introduced on a licensed basis. The Licensing Service had consulted quite widely with stakeholders. Mr Harrison stated in response to a question from the Chairman that there were no likely implications resulting from the Hemming judgement as costs would arise from compliance checks relating to licensed operators in Leicester Square and Charing Cross Road. Officers did not anticipate a significant unlicensed level of enforcement.

4.2 Members were agreed that no pitches should be permanently assigned to portrait artists. As stated by the Chairman, permanent pitches became property under the Human Rights Act. Councillor Mitchell added that space

should be allocated as and when it became available. Councillor Burbridge made the point that the system should be fair so that no artist was able to obtain the best pitch for too long. Mr Harrison in response to this point commented that the Licensing Service had set a rota during the pilot scheme to ensure fair allocation of pitches to artists. It was also not intended to restrict the pitches to those who had previously been located there. This was an opportunity to give more artists the opportunity to trade, including those potentially studying at arts colleges which would add to the look and feel of the environment.

- 4.3 Councillor Mitchell had submitted a response to the consultation in his capacity as Member for St James's Ward. He stated that the topic was a sensitive issue. Opening out licences to more people was beneficial in that it could add to the landscape of central Westminster but there were potentially some downsides. Busking had been infiltrated by gangs and the spread of this activity needed to be avoided. Portrait artists had also in the past added to the problem of pedestrian congestion which was a pickpocketing opportunity. More pitches in Swiss Court were likely to lead to a pedestrian pinch point. As set out in his response to the consultation, he agreed with the Leicester Square Association that portrait artists should be encouraged to brand themselves so that tourists would be able to identify licensed artists.
- 4.4 Mr Harrison advised that it was intended to update the Cabinet Member Report before it was submitted to Councillor Astaire, taking into account the views of the Committee.
- 4.5 **RESOLVED:** That the Cabinet Member Report be revised, taking into account the views of the Committee.

5. LICENSING ACT 2003 – OPENING HOURS

- 5.1 The Committee received a report explaining why applicants for premises licences were required to state opening hours on the application form despite them not being a licensable activity and why Members can take them into account when considering licensing applications. Sharon Bamborough, Assistant Service Manager, Environmental Health Consultation & Licensing, stated that the legal advice received was that the licensing authority can and should determine the opening hours and the closing hours for the premises and Members of the Licensing Sub-Committee should always apply their minds to those hours as well as the hours for the licensable activities themselves. She commented that one of the questions which had been raised in relation to opening hours was what action could be taken if the premises remained open after the closing time set out on the licence. On a practical level the Council's Enforcement Team had found the threat of a review to be an effective and appropriate method to use in this instance. Being able to prosecute the premises might depend on whether being open beyond the hours set out on the licence was also linked to licensable activities taking place.

5.2 Mr Large made the point that the Council's Core Hours policy particularly related to the hours when premises closed. Councillor Caplan stated that it would be useful to make the appropriate information about opening hours more widely available, including on the Council's website. The Chairman asked whether applicants tended to be misinformed about opening hours when completing an application. Ms Bamborough responded that most lawyers were aware of Council policy. Sometimes incorrect information was, however, provided by applicants or agents on the statutory application form. Councillor Hampson asked for an interpretation on how the Sub-Committee might control retail hours for off-licences. Ms Bamborough advised that this was at the Sub-Committee's discretion. Members might not always believe it to be appropriate to match the hours for licensing activities to the premises' opening hours. The Chairman added that dedicated off-licences did not tend to suppose that their opening hours should be longer than the hours on the licence for licensable activities. This was not the case for many general shops, particularly supermarkets and convenience stores.

5.3 **RESOLVED:** That the contents of the report be noted.

6. LICENSING APPEALS

6.1 Mr Large provided Members with an update on licensing appeals since the previous meeting of the Committee in June 2013. There were seven matters heard originally by the Licensing Sub-Committee that had been appealed and had been scheduled for the Magistrates' Court. In respect of Break Point in William IV Street, the District Judge refused the appeal and awarded the Council full costs. In respect of Revolution in St Anne's Court, the Appellant had withdrawn the appeal and costs were being sought by the Council. In respect of 28/50 in Maddox Street and Marks and Spencer in Cardinal Walk, the matters had been referred back to the Sub-Committee and settled. In the case of Maddox Street, this had followed a compromise offered by the Appellant's representatives. In respect of Shakespeare Tavern in Buckingham Palace Road, a compromise option had been offered by the Appellant's representatives and this was to be considered by the Sub-Committee after this meeting. Appeal cases for Starbucks in Trocadero and Manbar in Charing Cross Road were scheduled for February 2014 and April 2014 respectively. Mr Large also referred to the five matters that had progressed to the High Court. This included the sex establishment licensing case brought by Mr Timothy Hemming. The Council was waiting for the Supreme Court to determine its application for permission to appeal. Submissions in support of this application had been received from a number of regulatory bodies.

6.2 Councillor Bradley expressed some concerns that there might be appeal cases that were settled that should have been defended by the Council. The Chairman stated that in the case of Marks and Spencers in Cardinal Walk, she did not believe there was sufficient evidence to suggest that the licensing objectives would be undermined if it was granted. Each case where settlement was proposed should be considered on its merits, taking into account the view of Counsel. Mr Large advised Members that there were

always likely to be some settlements of appeals. There was usually at least six months between the Sub-Committee considering an application and an appeal being heard and the exchange of much more detailed evidence occasionally changed the factual position and the likely prospect of success or not. Most cases that were settled involved a compromise offered by the appellant. Only the Sub-Committee settled cases and not officers. The Council's lawyers were able to give advice but it was felt that it gave added weight to a recommendation if it was the Counsel who would be representing the Council at an appeal providing his or her view.

6.3 **RESOLVED:** That the contents of the report be noted.

7. **POLICY IN RESPECT OF BARS IN RESTAURANTS**

- 7.1 The Committee briefly discussed recent applications at Licensing Sub-Committee meetings involving bars being operated within restaurants and how the Council's policy should be applied. Members commented on the fact that the representatives of applicants had recently referred to the case of Steak & Co in Charing Cross Road as a precedent for permitting a number of patrons in the bar area to consume alcohol without it being ancillary to food. Mr Large stated that the appeal decision which had overturned the Council's decision to refuse the application was not a precedent having been decided in the Magistrates Court and he would have no problem contesting an appeal on similar grounds. The Council had a strict policy on bars in its stress areas.
- 7.2 The Chairman stated that there were a few genuine applications where an exception to policy could be found. One such had been Union Jacks in Covent Garden where the applicant had sought to have up to 15 persons consuming alcohol without it being ancillary to a meal. In this case, alcohol would not be consumed in the basement after 20:00 hours, the applicant would not want drinkers walking past an open kitchen and of particular importance was the proposed reduction of the hours for late night refreshment at another Jamie Oliver premises, The Dog House. The Dog House licence had previously permitted a fast food premises in the centre of the West End Stress Area until 05:00 hours and a condition was proposed to cut the hours back to 01:00 hours, reducing cumulative impact. The Chairman added that it was vital that firm reasons were given if Sub-Committees were minded to grant an application as an exception to policy in a stress area. Councillor Mitchell made the point that in terms of ranking, the least serious bars in restaurant applications were when alcohol was being served prior to a meal, then of significantly more concern was having alcohol after a meal and the most serious was alcohol not being ancillary to a meal.
- 7.3 Members noted that section 2.5.3 of the Statement of Licensing Policy 2011 was particularly relevant which Ms Bamborough read out. This includes the section that 'the Council is particularly concerned that restaurant premises in the stress areas do not, even in part, come to operate as bars and particularly not as "vertical drinking" premises where customers consume alcohol standing throughout the evening. Submission has been made that not every individual in a group may wish to eat, but should not be prevented from

accompanying diners and having a drink. The Council, however, is not minded to relax conditions for restaurants where alcohol may only be consumed by persons as an ancillary to their substantial table meal. However, it will prioritise its enforcement efforts at preventing a change of character of the premises towards bar use'.

8. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

8.1 The Chairman asked whether Members had any additional points they wished to raise. Councillor McAllister requested that in the event that the Police did not object to an application going to the Licensing Sub-Committee that this was set out in the relevant report. Ms Bamborough responded that application reports were supposed to include if the Police had stated that they had no objections. Sometimes there had been criticism when the Police had been referred to in a report and they were not an interested party. The Chairman commented that she believed there was value in the information being in the report as the Police was a responsible authority. Ms Bamborough advised that she would feed this point back so that reports would provide this information if the Police had no objections.

8.2 The Chairman provided an update on the Licensing Protocol which had been reviewed by the Committee at the meeting in March 2013. The document sought an understanding with the Police regarding the threshold point when reviews would be submitted on the grounds of crime and disorder, including for venues which were blighted by drunkenness or disorder over a number of years. She considered that the local Police accepted that drunkenness was a root cause of crime and disorder and had no objections to the Protocol. However, the Metropolitan Police had produced a central licensing strategy which the Council would respond to. It was the case that each licensing authority was permitted to have its own policies and that a central approach for all London Boroughs was not appropriate.

8.3 The Chairman informed Members that the first meeting of the West End Partnership: Crime, Community Protection And A Better Quality Night Time And Evening Economy Working Group had taken place the previous evening. Meetings would take place approximately once a month and she would look to provide feedback on the work of the Working Group to the Committee.

9. FUTURE LICENSING COMMITTEE MEETING DATES

9.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 12 March 2014, Wednesday 9 July 2014, Wednesday 19 November 2014 and Wednesday 11 March 2015. All meetings are scheduled for 10.00am.

10. CLOSE OF MEETING

10.1 The meeting ended at 11.35pm.

Chairman

Date