



**City of Westminster** Licensing Committee Report

**Meeting or Decision Maker**    **Licensing Committee**

**Date:**                                **12 March 2014**

**Classification:**                    **General Release**

**Title:**                                 **Area Premises Licences - Discussion Paper**

**Wards Affected:**                 **All**

**Financial Summary:**             **None.**

**Report of:**                         **Leith Penny - Strategic Director of City Management**

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**1. Executive Summary**

- 1.1 The City Council holds a number of its own Area Premises Licences. These are held on behalf of the City Council by the Special Events Group and are used for the facilitation of Special Events held on the public highway or within public open spaces, such as parks and gardens. The use of the Area Premises Licences has been largely successful. However, in recent months a number of concerns have been raised with regard to their application and it was felt that an internal review of their use would be appropriate.
- 1.2 The attached paper highlights the key concerns, details the findings of this review, considers the benefits and dis-benefits of the current arrangements and makes recommendations with regard to any potential changes that may be required.

## 2. Recommendations

- 2.1 The Licensing Committee note and comment on the attached report.

## 3. Background

- 3.1 Under the current Licensing Act (2003) the City Council holds a number of its own premises licences, covering some of the City's busiest and highest profile areas (including Maida Hill, Piccadilly, Whitehall, Covent Garden, Leicester Square, Soho, Regent Street and Oxford Street). These licences were originally granted in 2006. At that time the DCMS expressed a view that this was an avenue that Local Authorities might explore. The relevant guidance stated that:

*“Local Authorities should bear in mind their ability to seek premises licences from the licensing authority for land or buildings under public ownership within the community in their own name. This could include for example village greens, market squares, promenades, community halls, arts centres and other public areas where festivals and carnivals might take place. Performers and entertainers would then have no need to obtain a licence or give a temporary events notice to themselves to enable them to give performances in these places...although they would need the permission of the local authority to put on the event....”*

- 3.2 Nothing in the Act however, quite envisaged Westminster's position whereby significant swathes of land containing a mixture of public spaces and public highway were granted Area Premises Licences. The licences were put in place for a number of valid reasons. At the time there was concern regarding the workload that the new Act would generate and it was anticipated that holding our own Area Premises Licences would provide certainty to event organisers. It was also envisaged that holding our own licences would enable the safe, controlled facilitation of event activities. Specifically, it was envisaged that by providing this framework, event organisers could be encouraged to submit their plans to the multi-agency LOSPG (Licensing, Operational and Safety Planning Group) event planning process, under the 'umbrella' of an area licence held by the Council. In this way it was thought that proper consideration could be given to the whole range of factors that are relevant in deciding whether a given event proposal ought to be permitted, such as traffic and pedestrian congestion, local consultation, the appropriateness of an event to its proposed locale, the management of litter and waste etc, and not just those considerations specific to Licensing law.
- 3.3 The use of the Area Premises Licences has been largely successful. However, in recent months a number of concerns have been raised with regard to their application and it was felt that an internal review of their use would be appropriate.

3.4 The attached paper highlights the key concerns, details the findings of this review, considers the benefits and dis-benefits of the current arrangements and makes recommendations with regard to any potential changes that may be required.

3.5 In summary the review found that:

- Area Premises Licences were established for valid strategic and operational reasons. All of those reasons still apply and they are an essential part of the licensing and event management tool box.
- The use of free access public open spaces remains the responsibility of the City Council, whatever process (in terms of 'no objection' or permissions) are in place – or not in place.
- The Area Premises Licences are key to ensuring certainty in planning the event activities as, alongside highways consents, they form the City Council's control in unique or 'special' circumstances as an assurance that we have used our powers reasonably, responsibly and to the limit of our resources.
- The LOSPG process aids this. Key partners see the LOSPG process, backed with an Area Premises Licence as a key risk management control and they rely on the consistency and certainty that this brings in their planning.
- Not all proposals contain regulated entertainment, however, for the avoidance of doubt and to enhance the City Council's and London's reputation the Area Premises Licences allow the certainty required in these circumstances.
- We must ensure that management systems already in place are robust, are understood by all and allow for all parties to influence the decisions taken. Those decisions will be based upon a consideration of all relevant facts, licensing impacts, complexity of event planning and operations, resident/community and member concerns. We should establish which type of licence is the best fit for each event activity and apply it accordingly.
- Whether an event activity requires a licence or not, consultation should be a key element of the event activities' planning process.

3.6 Members of the Licensing Committee are asked to note and comment on the findings of the report.

#### **4. Financial Implications**

4.1 None

#### **5. Legal Implications**

5.1 Legal services have been consulted as part of the review and have commented on the content and findings of the discussion paper.

#### **6. Staffing Implications**

6.1 None

**7. Consultation**

7.1 A meeting was held with key resident representatives from the Soho area in order to gain an element of initial feedback in relation to the issues highlighted in the report with regard to “Consultation and Engagement with Local Residents and Communities”.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact:**

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**BACKGROUND PAPERS:**

**None**

## Appendix A

### Area Licences – Discussion Paper

#### **KEY ISSUES and SUGGESTED REMEDIES**

##### 1) Decision making processes

The Area Premises Licences require a named person of experience and proven competence to be responsible for compliance with the set conditions, co-ordination and planning. The council's Special Events Group therefore hold the Area Premises Licences on behalf of Westminster City Council. There is a general recognition by all concerned that Area Premises Licences have a part to play in the overall licensing system. They can be ideal for small, low impact community event activities that align to defined criteria, removing a bureaucratic/regulatory burden, and have been used as such. They also assist in the facilitation of "last minute" event applications that the City Council wishes to support and they can afford the council a robust level of control over the way event activities are planned and executed on the ground. However, there have been instances where the use of an Area Premises Licence has been considered inappropriate; where the impact of an event activity has been significant and where the consideration of local resident/ward member and business views has been questioned.

When an event proposal entails any form of licensable activity, the most appropriate means of licensing it must be identified. An event activity may be licensed by way of a Temporary Event Notice (TEN), via its own Premises Licence or, under current arrangements and for event activities within the relevant geographic areas, permission can be sought to use one of the standing Area Premises Licences held by the City Council. So who decides on which route an event application takes in relation to permissions for licensable activity?

On the whole, a decision on whether event activities are permitted to use an Area Premises Licence has traditionally been taken by the Commissioner of Events Filming and Contingency Planning, as the named licence holder on behalf of the City of Westminster. Concern has been expressed that the use of Area Premises Licences is sometimes permitted without consultation with other Westminster services and, had such consultation taken place, a more considered assessment of the possible impact of event activities might have been possible. It has been suggested that other City Council services may need more input into determining the permissions route an event should take from a licensing perspective. There is also concern that Area Premises Licences are sometimes used for last minute expediency (when perhaps we should be saying "no" to an event proposal where it comes in under the set timelines), or to circumnavigate the more formal licensing application process.

Each time an event organiser makes use of an Area Licence the Licensing Service and Committee are not able to consider a freestanding application on its own merits. The Licensing Service needs to be in a position whereby they are satisfied that they have the ability to influence and implement licensing matters according to established policy.

Licensing has sometimes been unaware that permission to use an Area Premises Licence has been given and when difficulties arise or enforcement action is required, conflicts can arise.

In recent months, the establishment of a Pre-Approval Validation (PAV) process for event applications has helped. The PAV meeting is chaired by the Operational Director for Street Environment and is attended by Planning, Licensing, Special Events and Highways representatives. Its very purpose is to *“provide a structured opportunity for all event applications (not including filming) to be validated, in terms of alignment with all relevant WCC policies and any requirement for involvement/consents by Planning, Licensing and/or Roads Management, before they proceed for final approval by the Special Events Team”*<sup>1</sup>.

New event applications are considered at the fortnightly PAV meetings. At this meeting Licensing confirm whether each event on the rolling list will require a licence, and if so which route it should take (individual Premise Licence, Area Premises Licence or TEN). A decision, agreed by all parties, is reached. Any matters that are not agreed can be escalated to the Strategic Directors for City Management and/or Built Environment.

Westminster’s most major impact events, which may cause significant disruption to local communities (e.g. London Pride, Chinese New Year Celebrations and Notting Hill Carnival) do not currently pass through the PAV process. This is partly due to the fact that they did not submit formal event applications (which would normally trigger their inclusion in the PAV process), but they should be subject to the same processes of assessment and scrutiny as those that do. Discussions seem to indicate that it is these complex, major impact events which give rise to the greatest concern with current processes.

Major impact events are currently considered at the existing “Major Impact Events Overview Westminster” (MIEOW) meetings, which take place very six weeks. These meetings offer the opportunity for discussions to take place at an early stage alongside operational considerations, they also give an overview of annual and exceptional events and track major impact event planning and issues over a period of time. They do not however, undertake the critical role that PAV performs i.e. to give early consideration to event applications in terms of alignment with all relevant WCC policies and determining which statutory consent processes will apply. (It is also significant to note that PAV was set up with the explicit agreement of both Strategic Directors, with clear terms of reference).

We know that event content and details change over time but giving early warning and knowledge around proposals and changes enables informed questions to be asked and on that basis the correct decisions to be made on the type of licensing permissions required. Processes should also allow for an event proposal to be revisited by the relevant group should the proposals significantly change at any time after the initial application.

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<sup>1</sup> PAV Terms of Reference and Business Process document – April 2013

The PAV process is proving successful. However, to ensure we get the most benefit and effectively address the need for clear and collegiate licensing decisions, there are two issues that require addressing:

- ALL events, including major impact events, should be subject to the PAV process. In this way we can ensure that every event, whatever its nature, is subject to a collegiate assessment of the formal permissions that are required, with all relevant services represented.
- It is critical that agreements and decisions made at PAV meetings are followed through. One example has been given where the very strong guidance from licensing representatives at PAV was understood to have been that an event required its own premises licence, but it was not implemented as such. The organiser was subsequently advised to submit TEN applications, seemingly contrary to the position agreed at PAV.

It is therefore recommended that for any event activity, including major events:

- a) Agreeing a position on what type of licence will be used for an event activity, must be included as a mandatory step in the PAV meeting and should also be raised as part of the operational overview at the MIEOW meeting (if applicable).
- b) Attendance at both PAV and MIEOW should be consistent and each interested service or party must be represented.
- c) PAV decisions must be clearly documented and followed through.

A review of PAV is due to be undertaken now that the new process has been running for 6 months. The recommendations of this paper will be fed into that review and any resulting process improvements will be extended and applied to MIEOW also if appropriate, to gain maximum benefit across all types of events. The PAV review will also consider the option of developing criteria upon which the decision to grant permission to use an Area Premises Licence would be made, and the option of varying the Area Licences accordingly.

Following this review of the use of Area Licences, the Special Events Group has since confirmed that major impact events will now be subject to the PAV process. The Chinese New Year Celebrations and London Pride will be early examples of this and have been asked to submit an application in an attempt to alleviate these issues. Notting Hill Carnival discussions are also ongoing with all relevant internal services to discuss the way forward especially with regards to Licensing matters. It should be noted that the Notting Hill Carnival is not covered by an Area Licence and that the parade element of the event is not licensable under the Licensing Act. The main items currently under review are the static sound systems.

It should also be noted that neither the PAV nor the MIEOW procedure undermines or replaces any other process of event permission planning, including the establishment and operation of an LOSPG (which is already a condition of all the Area Premises Licences). Rather, they supplement those processes, adding rigour to the assessment of what consents will be needed and providing decision timescales that would aid more effective pre planning on the organisers part.

## 2) Licensing, Operational and Safety Planning Group (LOSPG)

Condition 15 of each Area Licence states that *“licensable activities and compliance with the Licensing Act will be managed by the City Council’s Special Events Team through the LOSPG process”*.

The LOSPG is recognised as a successful multi-agency event planning process that enables and drives co-ordinated planning, communication and the sharing of information across a number of agencies. This is an adopted process for London wide proposals for all parties to co-ordinate their agreements and is currently being used for major impact events such as Ride London, Tour de France and was key to our safe and successful conclusion of the Olympic Games. An LOSPG is chaired by a representative of the Special Events Group and typically includes representatives from the event organiser (including the event safety coordinator and stewarding company), WCC (Events team, EH consultation team), Met Police, London Fire Brigade, London Ambulance Service (on behalf of NHS England) and land owners as appropriate, as well as relevant transport authorities. It facilitates the management of risk by the concept of joint liability and enables a single point of control to be established. Through this process each agency is given a full understanding of the whole picture and the overall impact an event may have, and can influence event plans with the aim of ensuring a safe and successful outcome.

The aim of an LOSPG is to reach a position of “no objection”. A letter of “no objection” is issued to the event organiser which contains the mandatory and additional conditions attached to the Area Premises Licence, where applicable, as well as a number of other conditions relating to crowd management, noise, advertising and publicity, vehicle restrictions, cleansing and media management etc.

The LOSPG is, therefore, a powerful tool for the City Council to maintain control over the way Westminster’s public spaces are used for event activities and in conjunction with other co-ordinated powers provides the base for a safe and successful outcome. As such, it is crucial that the process is well managed, so it is recommended that we ensure LOSPG procedures are robust and consistent, with clear Terms of Reference, minutes, logging of decisions and appropriate involvement by all relevant services. This notwithstanding, it is generally a thorough and well regarded process, tested during 2012 and not found wanting, which the PAV decision makers should have regard to when considering which licence process to use.



### 3) Which Form of Licence to Use

As outlined above, event activities may be licensed by way of its own Premises Licence, by obtaining permission to use one of our Area Premises Licences, or via a Temporary Event Notice. Many can be covered by Temporary Event notices (TENs). The system of TENs is intended as a light touch process and as such the carrying on of licensable activities does not have to be authorised by the licensing authority on an application. Instead the event proposer 'gives notice' to the licensing authority. Although intended as light touch from a licensing perspective – and therefore appropriate in some cases – the TEN process has its limitations:

- TENs do not have to be submitted until 10 days before a proposed event. “Late TENs” can be submitted up to 5 days in advance of the proposed event activities. The timescales for consideration are very short;
- only the Police and EH are able to object to TENs (EH act as the City Council’s responsible authority in this respect). No other council services may make an objection, neither may any member of the public or local stakeholder. This effectively limits the level/scope of consultation on whether event activities should go ahead;
- EH or the police may only object if they consider that the proposed event activities are likely to undermine a licensing objective. They have only 72 hours to make their representations, although they can intervene by agreeing a modification of the proposed arrangements directly with the TEN user. Licensing must consider any objections at a hearing on the basis of statutory licensing objectives, and decide whether the event activities should go ahead. If no objection is received the application goes ahead;
- conditions may only be applied to TENs if the conditions are also imposed on a premises licence or a club licence premises certificate that has effect in respect of the same premises. All other TENS have no conditions attached. Control via conditions is, therefore, limited unless associated with an existing premises licence or Area Licence;
- TEN’s can be granted without reference to another licence holder and without the Area Premises Licence in place which covers many of the activities that a specific TEN may request, many TENs may be reasonably granted or remain unopposed without links to other City Council powers or liabilities; and,
- as a TEN may have no conditions attached to it, it is not possible to require through conditions that an LOSPG process is undertaken. The benefits of LOSPG, as discussed above, are therefore missed.

Despite the limitations set out above, TENs have a crucial place in the system when managing events. The tight turnaround times can be a benefit for simple event proposals that need an expeditious, light touch approach. Meanwhile the lack of an LOSPG process or conditions is not problematic for events that will be less disruptive and create limited impact on the public realm.

The Special Events Group have no formal input into the TEN process. The current policy position is that when it has been decided that event activities may use one of our Area Premises Licences, TEN applications within that event area are opposed by the City Council and the Police, in favour of the Area Premises Licence and the conditions attached. It is argued that this leads to more effective coordinated planning and control by achieving a “no objection” via LOSPG and applying a number of conditions as part of this process. However, concerns have been raised in relation to consistency of approach and a lack of consultation when issuing TENs. In the course of recent discussions, the following has been noted:

- sometimes a TEN application is submitted linked to an event for which the Special Events Group has given permission to use an Area Premises Licence. A TEN application has in some cases been approved without reference to the Special Events Group, or with reference to the presumption that there will be an objection in favour of using the Area Premise Licence instead. When this has happened the level of control the Special Events Group have over the event activities is affected and regulated activities can appear outside of the event planning process.
- On the other hand the Special Events Group have sometimes failed to inform Licensing or Environmental Health that event activities have been given permission to use an Area Premises Licence. So if TEN applications are then submitted, they are processed accordingly.
- the EH representatives on LOSPG are often different to those considering TENs, which adds to the risk of links being missed.

It is, therefore, co-ordination that is needed, with better sharing of information in both directions.

In short, Area Premises Licences, Premises Licences and TENs all have their place and are immensely useful tools. It all comes back to using the right licensing method on a case by case basis, and ensuring robust processes are in place for making those decisions and enabling information to be shared across the relevant teams. It is therefore recommended that;

- a) all decisions to permit event activities to use one of our Area Licences made at PAV are noted by the Licensing Service and any subsequent TEN applications relating to the same event area are objected to automatically, in line with the policy position, this will also be highlighted at MIEOW meetings;
- b) Special Events should be notified (or have visibility) of TEN applications that are being used within the designated “Event Area” or immediately outside the “Event Area” on the same day, so that they may highlight any instances where they might consider use of the Area Premises Licence more appropriate. The final decision can then be reached collegiately and the TEN granted or objected to accordingly.

#### 4) Consultation and Engagement with Local Residents and Communities

Concerns have been expressed about growing irritation and resentment in certain sections of the community that event activities taking place within their localities are being given permission to use an Area Premises Licence without effective prior consultation or engagement. Discussions indicate that this is mainly associated with some of the large major impact and complex events which can sometimes cause significant disruption to local communities.

There is a view that Area Premises Licences are, at times, being used as last minute expediency, or as a means of circumventing the formal licensing process. Residents are reluctant to take the City Council to formal review and therefore, consider themselves relatively powerless in terms of their ability to influence decisions taken in relation to event activities and associated regulated activities. It must also be noted that many activities that seem to cause concern do not fall under regulated entertainment, or are considered “incidental” to the main activity of a particular event (the parade element of Notting Hill Carnival is an example). The LOSPG process is therefore aimed at covering all activities - regulated entertainment or not.

Guidance issued under Section 182 of the Licensing Act 2003 makes it clear that, in addition to the furtherment of the four licensing objectives, the legislation also supports a number of other key aims and purposes including:

*“..encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them...”* .

We have a legal duty to consult on licence applications and our licensing public consultation register allows any interested party to view and comment on a pending application. Also, when granting some of the Area Premises Licences (Soho and Leicester Square), Committee specifically considered the need to ensure appropriate public engagement and consultation on event activities using these licenses, when it established Condition 11:

*“The LOSPG shall consult with the appointed representatives of relevant residents associations and businesses on all relevant events (those likely to have a larger impact on the life of the communities) prior to the use of the Licence for the specific event”*.

Whilst ad hoc meetings between Special Event Officers and resident/business representatives may take place as part of the LOSPG procedure, the current arrangements do not deliver a formal and systematic consultation process. There is no established protocol for consultation with local residents and businesses “*prior to the use of a licence for a specific event*”.

To date the requirement has been for the cost and resource of advance and current information provision to local communities and the public to be met by the event organiser and in some cases TFL or the GLA. However, we must not rely solely on event organisers to engage with local stakeholders themselves, as although the “no objection” letter touches on this, it only obliges the organiser to “*notify all affected frontages, businesses and residential*”. This may only mean, at a minimum, making them aware of the date and reason for the event, including proposed restrictions, temporary installations and the schedules of the day/period of activity. In practice, residents, businesses and others do not experience this as full and open consultation. The City Council must therefore ensure that it undertakes structured consultation with these interested groups as a matter of course for all events making use of our Area Premises Licences, to ensure we fulfil our legal duty under the Licensing Act.

To ensure our legal obligations are fulfilled and provide for resident and business input into licensing decisions for events that have a significant impact on their communities, it is recommended that:

- a) as part of a review of the City Council’s Licensing Policy proposed for 2014, we develop and consult on a dedicated policy for Area Premises Licences which will include the possibility of developing clear criteria as to when they will or will not be used.
- b) the City Council develop a clear and structured protocol, built into the LOSPG process, for consultation with residents, businesses, Members and other interested parties.