



City of Westminster

Licensing Committee

Item No:	5
Date:	12 March 2014
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
Report Author:	Peter Large, Head of Legal and Democratic Services
Contact details	Tel: 020 7641 2711 Email: plarge@westminster.gov.uk

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, 458 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 To date, 446 appeals have been heard / settled / withdrawn: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- 203 withdrawn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 Appeals

4.1 Covent Garden Food and Wine, 20 Wellington Street WC2

By application received on 4 July 2013, the Licensing Authority applied to review the premises licence of Covent Garden Food and Wine located at 20 Wellington Street, WC2. The review was brought on the grounds of the prevention of crime and disorder and public nuisance and the protection of children from harm. The application for review followed the sale of alcohol on three separate occasions (15.07.12, 30.07.12 and 02.06.13) beyond the hours permitted by the licence and following the sale of alcohol to a minor in November 2012.

Representations in support of the application for Review were received from Environmental Health and the Metropolitan Police.

The application was considered by the Licensing Sub-Committee on 12 September 2013. The Sub-Committee considered this was a serious matter and that substantial evidence had been brought before them of persistent breaches of the conditions of the licence relating to the sale of alcohol after the permitted terminal hour and one instance of selling alcohol to a minor.

The Sub-Committee also noted that a number of other conditions of the licence (i.e. ensuring alcohol remains behind locked grills, till prompts to prevent the sale of alcohol to under 18s and the availability of CCTV footage) had failed to be complied with or addressed following specific requests to do so from Council Officers.

After careful consideration the Sub-Committee considered it appropriate and proportionate to revoke the licence.

Notice of appeal was lodged by the Appellant's against the decision of the Sub-Committee. A date for the full hearing has been scheduled for 31 March and 1 April 2014 at Westminster Magistrates' Court.

4.2 Alfred's, Bourdon House, 2-2A Davies Street W1

The premises operate as a members club set over 4 floors (basement to third floor) with a restaurant and bar that is open to the public. The capacity of the venue is 120 persons on the Ground floor (excluding staff), 80 persons on the first floor (excluding staff).

The premises currently benefit from a licence permitting licensable activities including the sale of alcohol on Monday to Sunday to 00.00

By application received on 19 July 2013 Alfred Dunhill Ltd applied to vary their licence so as to :

- 1) Permit the use of the two remaining courtyards, subject to a condition that they are not used after 23.00
- 2) Vary the wording of condition 27 on the existing premises licence which currently reads:-

The Courtyard (shown on the plans attached to Appendix A3 as Courtyard A) will not open after 22:00

To:-

The Courtyard will not be open after 23.00

Representations objecting to the variation application were received from the London Fire and Emergency Planning Authority, the Environmental Health Service and 5 local residents.

The Sub-Committee considered the application on 26 September 2013. The Sub-Committee granted the application for the use of Courtyard C, with the variation of Conditions for Courtyard A. The variation to include Courtyard B was not granted, for the reason that including Courtyard B in the licensed area would result in an increase in noise and public nuisance, thereby undermining the licensing objectives.

Notice of appeal was lodged by the Applicant's on 11 October 2013. The full hearing of the appeal has been scheduled for 2nd to 4th April 2014 in Westminster Magistrates' Court.

4.3 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.

4.4 Ham Yard Hotel, Site Bounded by 5-10 Denman Street, 33-36 Great Windmill Street, 14-18 Ham Yard and 1-7 Smith's Court W1

By application received on 30 May 2013 Firmdale Hotels Plc applied for a new premises licence so as to permit:

- 1) Regulated Entertainment (Indoors and Outdoors) – Monday to Sunday 00.00 to 00.00
- 2) Late night refreshment (Indoors and Outdoors) Monday to Sunday 23.00 to 05.00
- 3) Sale of Alcohol (On and Off sales) Monday to Sunday 00.00 to 00.00
- 4) Opening Hours – Monday to Sunday 00.00 to 00.00

Representations objecting to the application were received from the Environmental Health Service, the Metropolitan Police Licensing Team, 2 residents associations and 2 local residents.

The Sub-Committee considered the application on 11 December 2013. The applicant's representative commented that a key reason for the application being an exception to policy was the reputation of Firmdale, the Applicant Company. Similarly to Ham Yard, his client Firmdale had opened the Soho Hotel at a site which had previously been an area of crime. It had been operated successfully as had other Firmdale hotels in Westminster over a 31 year period. He was not aware of any complaints relating to the hotels at Soho Hotel, Charlotte Street Hotel or Haymarket Hotel. This, he believed, went beyond the concept of running the premises well which the Licensing Authority expected of all licence holders.

Having heard from the applicant's, the Metropolitan Police, the Environmental Health Service and a local resident the Sub-Committee announced it wished to give additional thought to the various aspects of the application and as such the decision would be made available within five working days.

On 17 December 2013, the decision of the Sub-Committee was sent to the applicant and objectors. The Sub-Committee considered that it was in keeping with Policy HOT1 of the Council's Statement of Licensing Policy 2011 to grant the aspect of the application requiring alcohol to be sold at any time to people staying in hotel rooms for consumption on the premises and also the exhibition of film, in the form of recordings or non-broadcast television programmes to be viewed in hotel bedrooms. The Sub-Committee also was of the view that it was acceptable for hotel residents to have up to 5 bona fide guests at Ham Yard Hotel.

The Sub-Committee gave careful consideration to the elements of the application where the Applicant had applied for a terminal hour of 03:00 for licensable activities. Members considered that there were sufficient safeguards to ensure the licensing objectives would not be undermined in the event that a 03:00 terminal hour was permitted for private pre-booked events in the Event Room and Bowling Alley and on the ground floor and for pre-booked or ticketed events in the Theatre and Meeting Rooms in the basement.

The Sub-Committee granted a terminal hour of 01:00 for the restaurant on the ground floor where the sale and supply of alcohol would only be to persons seated taking a table meal there and for consumption by such persons as ancillary to their meals and by waiter and waitress service.

For the designated bar area on the ground floor, the Sub-Committee granted Core Hours. Alcohol in this area would not be ancillary to a meal and the condition as worded would permit vertical drinking. It would potentially add to public nuisance with the public having ability to use the bar area until the early hours of the morning and it becoming a destination venue.

The Sub-Committee noted that the Applicant had already amended the terminal hour for the fourth floor terrace to 21:30 hours. Members considered that the use of the courtyard terrace was also likely to cause nuisance to local residents at a later hour of the evening.

Notice of appeal was lodged by the Applicant's against the decision of the Licensing Sub-Committee. The Court have listed the matter for 10 days commencing 4 August 2014 at Westminster Magistrates' Court.

4.5 Boulevard, 7-12 Walker's Court W1

By application made on 5th December 2013, the Metropolitan Police Service applied for an expedited review of the premises licence for "The Boulevard" located at 7-12 Walker's Court W1. The application was made under s53A(1)(b) of the Licensing Act 2003 on the grounds that the premises were associated with serious crime or disorder. The Metropolitan Police sought the immediate suspension of the licence pending the full hearing.

On 9 December 2013 the Licensing Sub-Committee met to consider whether it was necessary to take interim steps pending the determination of the full review. Before the hearing commenced the Freeholders, Soho Estates Limited, submitted a valid transfer application. The application took immediate effect. Members of the Sub-Committee heard evidence and submissions from both the Applicant and the Licensee. Following lengthy examination and questioning by all parties, the Licensing Sub-Committee felt it necessary to impose an immediate suspension of the licence.

The full hearing of the review application was considered by the Licensing Sub-Committee on 2 January 2014. It had not been disputed by the Licensee that the premises had been associated with serious crime which had been uncovered as part of the covert police operation designed to combat venues suspected to be involved in the offence of handling stolen goods. The Police's position was that the premises licence should be revoked despite the transfer of the licence to what the police believed to be a reputable company, Soho Estates Ltd. The reason the Licensee wished to continue the licence was its commercial value. However, it was the view of the Police that the crime and disorder licensing objective overrode this. A particular concern was that the licence could be returned to another tenant who was minded to engage in similar conduct to the licence holder prior to Soho Estates.

The Licensing Sub-Committee were of the view that it would undermine the entire principle of the review process if premises were able to automatically avoid the consequences of serious crime as a result of corporate entities or individuals submitting a transfer licence. Members of the Sub-Committee would be abandoning their responsibility if they believed that the simple remedy to transfer the licence was sufficient. Whilst the transfer of the licence was something that had to be taken into account, it had to be weighed against the serious criminal activity that had taken place at the premises. In the circumstances, the Sub-Committee considered that it was appropriate to revoke the licence in order to promote the licensing objectives.

Notice of appeal was lodged on behalf of Soho Estates Ltd. The full hearing of the appeal has been scheduled for 21 and 22 July 2014 at Westminster Magistrates' Court.

4.6 Pleasure Lounge, 52 Rupert Street, London W1

By application made on 5th December 2013, the Metropolitan Police Service applied for an expedited review of the premises licence for “The Pleasure Lounge” which is located at 52 Rupert Street, London W1. The application was made under s53A(1)(b) of the Licensing Act 2003 on the grounds that the premises were associated with serious crime or disorder. The Metropolitan Police sought the immediate suspension of the licence pending the full hearing.

On 9 December 2013 the Licensing Sub-Committee met to consider whether it was necessary to take interim steps pending the determination of the full review. Members considered the evidence and heard submissions from both the applicant and the Licensee. Following lengthy examination and questioning by all parties, the Licensing Sub-Committee felt it necessary to impose an immediate suspension of the licence.

The full hearing of the review application was considered by the Licensing Sub-Committee on 2 January 2014. The licensee was not in attendance at the hearing and was not represented. The Sub-Committee viewed, in private, video footage showing specific interactions between Test Purchase Officers and employees of the premises which reflected the accounts set out in the ‘evidential summary’ in the Report. From the footage recorded on covert video and audio recording equipment from March 2013 to October 2013, Members were able to reach the logical conclusion that some of the people connected with the management of the venue were well aware of, if not actively involved in, serious criminal activity associated with the premises.

Having read the report provided, heard from the Metropolitan Police and observed video footage at the hearing, Members were satisfied that the premises had been associated with serious crime which had been uncovered as part of the covert police operation designed to combat venues suspected to be involved in the offence of handling stolen goods. The Sub-Committee considered it was appropriate to revoke the licence in order to promote the licensing objectives.

Notice of appeal was lodged on behalf of Sylwia Grzyb against the decision of the Licensing Sub-Committee to revoke the premises licence. A date for the full hearing of the appeal has been scheduled for 24th, 25th and 28th July 2014 at Westminster Magistrates’ Court.

4.7 Ognisko Polskie (Polish Hearth Club), 55 Princes Gate, SW7

By application dated 9 October 2013 Ognisko Polskie (Polish Hearth) Limited applied for a new premises licence to permit:

1. Regulated Entertainment (Indoors) – Monday to Thursday 10.00 to 23.30; Friday to Saturday 10.00 to 00.00 and on Sunday 12.00 to 22.30
2. Late Night Refreshment (Indoors) – Monday to Thursday 23.00 to 23.30 and Friday to Saturday 23.00 to 00.00
3. Sale of Alcohol : Consumption (On and Off) – Monday to Thursday 10.00 to 23.30; Friday to Saturday 10.00 to 00.00 and on Sunday 12.00 to 22.30

Representations objecting to the variation application were received from the Environmental Health Service, Metropolitan Police, 7 local residents, 3 residential associations and 2 Councillors.

The Sub-Committee considered the application on 28 November 2013. The Sub-Committee noted that the proposed hours were within the Council’s Core Hours and the Polish Hearth Club was not located in one of the designated stress areas. However, Members also considered that the Polish Hearth Club is located in a very residential area and there was a lack of clarity within the application as to the steps which would be taken to prevent public nuisance.

The Sub-Committee decided that it was prudent for the terrace area to close at 21:00 hours given that it would be used by the public and not just Club members and also that the numbers using the restaurant were likely to rise resulting in more potential noise on the terrace. Members considered that there was a lack of clarity from the Applicant of the use of the third and fourth floors and therefore permitted licensable activities only on the basement, ground floor and first floor and second floor function rooms. In order to prevent public nuisance the Sub-Committee limited off-sales to part consumed and resealed bottles of wine supplied ancillary to a meal.

Notice of appeal has been lodged by the Applicant's. A date for the full hearing of the appeal has been scheduled for 4th, 5th and 8th September 2014 at Westminster Magistrates' Court.

4.8 Avalon at 39-45 Shaftesbury Avenue, London, W1D 6LA

By application received dated 27 December 2013, the Metropolitan Police applied to review the premises licence for the nightclub 'Avalon' located at 39-45 Shaftesbury Avenue, London W1D 6LA under section 53A(1)(b) of the Licensing Act 2003 (premises associated with serious crime and disorder). The application was made by the Metropolitan Police following a fatal shooting within the premises on 26 December 2013 at approximately 03.00. At the time of the incident, the premises were operating under a Temporary Event Notice (TEN).

Since the transfer of the licence approximately one year previously to the current licensee, Zafaran Limited, and the operation of the premises as 'Avalon', there had been 5 recorded allegations of GBH assaults, 3 ABH assaults and 5 incidents of common / public order offences. Of those assaults, 7 had occurred since 24 November 2013.

The Licensing Authority held a hearing on 30 December 2013 to consider whether it was necessary to take any interim steps pending the determination of the full review applied for. Upon hearing evidence and submissions from the Metropolitan Police and from the Licensee, the Licensing Sub-Committee felt it was necessary to suspend the licence.

The full hearing of the review was held on 21 January 2014. The Sub-Committee heard submissions from the licensee and from the Metropolitan Police. The Sub-Committee also heard from representatives of the landlord, Delfont Mackintosh Theatres Limited, who explained a notice to terminate the lease had been issued and that the landlord had applied for a transfer of the licence but there were outstanding issues with the Council as to whether consent had been given and whether the application could proceed without consent.

The Sub-Committee was horrified that such an event had taken place and could not remember a time when there had been a fatality of this kind in a licensed premises in Westminster. The possibility that people associated Westminster clubs with fatality was not something which the Sub-Committee expected to have to deal with and needed to be taken extremely seriously. The Sub-Committee made it clear that it could not allow itself to be involved in any decision that suggested that this kind of situation could arise again. The Sub-Committee therefore considered that it was appropriate to revoke the licence due to the extreme seriousness of events.

The Sub-Committee also believed that where a licence holder had behaved so reprehensibly it seemed entirely inappropriate that they should be in a position to decide how the premises would continue to operate, which in effect was what was being proposed. The diligence by the Police in examining proposals and clarifying the relationship between parties had been helpful.

Notice of appeal was lodged on behalf of the Landlords, Delfont Mackintosh Theatres Limited. The full hearing of the appeal has been listed for 18th, 19th and 22nd September 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 Appellant was subsequently ordered to pay the City Council's costs of the hearing in the Magistrates Court.

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 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. The full hearing of the Judicial Review was scheduled for 13 and 14 May 2014 in the High Court to determine the matter. The Claimant's representatives have now advised of their instruction to withdraw their application and have agreed to pay the Respondent's costs in full.

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. An Order has now been received from the Supreme Court granting permission to Appeal.

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.

The application was heard on 21 February, and was successful, the Court holding that the transfer application was valid and was submitted in time. A transcript of the Judgment 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.