



City of Westminster

Committee Agenda

Title: **Licensing Committee**

Meeting Date: **Wednesday 19th November, 2014**

Time: **10.00 am**

Venue: **Rooms 5, 6 & 7 - 17th Floor, City Hall**

Members: **Councillors:**

| | |
|-------------------------|---------------------|
| Tim Mitchell (Chairman) | Peter Freeman |
| Heather Acton | Angela Harvey |
| Nickie Aiken | Louise Hyams |
| Rita Begum | Patricia McAllister |
| Susie Burbridge | Jan Prendergast |
| Melvyn Caplan | Shamim Talukder |
| Nick Evans | Aziz Toki |
| Jean Paul Floru | |

Members of the public are welcome to attend the meeting and listen to the discussion Part 1 of the Agenda

Admission to the public gallery is by ticket, issued from the ground floor reception at City Hall from 9.00am. If you have a disability and require any special assistance please contact the Committee Officer (details listed below) in advance of the meeting.



An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, please contact the Committee Officer, Jonathan Deacon.

**Email: jdeacon@westminster.gov.uk Tel: 020 7641 2783
Corporate Website: www.westminster.gov.uk**

Note for Members: Members are reminded that Officer contacts are shown at the end of each report and Members are welcome to raise questions in advance of the meeting. With regard to item 1, guidance on declarations of interests is included in the Code of Governance; if Members and Officers have any particular questions they should contact the Head of Legal & Democratic Services in advance of the meeting please.

AGENDA

PART 1 (IN PUBLIC)

1. DECLARATIONS OF INTEREST

To receive any declarations by Members and Officers of any personal or prejudicial interests in Matters on this agenda.

2. MINUTES

To approve the minutes of the meeting held on 9 July 2014.

(Pages 1 - 6)

3. GUIDANCE ON THE FILMING OF LICENSING SUB-COMMITTEE MEETINGS AND THE EXCLUSION OF THE PUBLIC FROM LICENSING SUB-COMMITTEE MEETINGS

Report of Head of Legal and Democratic Services.

(Pages 7 - 18)

4. LICENSING ACT 2003 - STATEMENT OF POLICY REVIEW

Report of Director of Strategy and Communications

(Pages 19 - 22)

5. LICENSING APPEALS

Report of Head of Legal and Democratic Services.

(Pages 23 - 36)

6. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

7. FUTURE LICENSING COMMITTEE MEETING DATES

11 March 2015, 15 July 2015 and 18 November 2015.

IN RESPECT OF THE FOLLOWING ITEM THE COMMITTEE ARE ADVISED TO CONSIDER IT IN PRIVATE IN ACCORDANCE WITH REGULATION 14 OF THE LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005, IN THAT THE REPORT CONTAINS LEGAL ADVICE TO THE AUTHORITY WHICH OUTWEIGHS THE PUBLIC INTEREST IN THE HEARING TAKING PLACE IN PUBLIC

8. MINUTES

(Pages 37 - 46)

To approve the confidential minutes of the meeting held on 9 July 2014.

Peter Large
Head of Legal & Democratic Services
14 November 2014

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City of Westminster

Minutes

Meeting:

Licensing Committee

Time and date of meeting:

**10:00 hours on Wednesday 9 July 2014 at City Hall,
64 Victoria Street, London, SW1E 6QP**

Attendees:

Councillors:

- Tim Mitchell (Chairman)**
- Heather Acton**
- Nickie Aiken**
- Rita Begum**
- Melvyn Caplan**
- Nicholas Evans**
- Jean-Paul Floru**
- Peter Freeman**
- Angela Harvey**
- Patricia McAllister**
- Jan Prendergast**
- Shamim Talukder**
- Aziz Toki**

Apologies:

Councillors Susie Burbridge and Louise Hyams.

Contact:

**Jonathan Deacon
Senior Committee and Governance Officer**

Details:

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

1. DECLARATIONS OF INTEREST

1.1 There were no declarations of interest.

2. MINUTES

2.1 The minutes of the Licensing Committee meeting held on 12 March 2014 were agreed as a correct record and were signed by the Chairman.

3. DEREGULATION BILL 2014 - LICENSING PROPOSALS

3.1 Barry Panto, Senior Assistant Solicitor, introduced the item. He stated that the report distinguished between the proposals relating to alcohol and entertainment licensing set out in the Government's Deregulation Bill and the proposals for the deregulation of entertainment licensing. Elements of the deregulation of entertainment licensing had either already been implemented by the Live Music Act 2012 and the Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 or had been proposed for implementation. The second wave of entertainment deregulation was still due to be implemented by a Legislative Reform Order but had appeared to be delayed. This included the proposals that live music and recorded music would no longer be licensable between 08:00 and 23:00 in licensed premises (open for on-sales) or in a workplace with an audience of not more than 500 people.

3.2 Mr Panto took Members through the proposals relating to alcohol and entertainment licensing in the Deregulation Bill. In respect of Community and Ancillary Seller Notices ('CANs'), there would be greater detail to follow in the secondary regulations. It was being proposed to allow small-scale, "low" risk alcohol sales over 36 months, without the need for a premises licence or Temporary Event Notices ('TENs') providing there is no objection from the Police, Environmental Health or the local authority. The proposal for TENs was to increase the maximum number per year from 12 to 15. In respect of personal licences it was proposed that a personal licence would continue indefinitely rather than all personal licences having to be renewed after 10 years as was the case currently. It was being suggested that the section of the 2003 Act would be repealed which made it an offence to sell liqueur confectionary to children aged under 16. Clause 56 of the Bill would insert a new paragraph into the Licensing Act to give licensing authorities the powers to exempt a supply of hot food and hot drink from the licensing requirements in specific circumstances. Clause 57 would amend the Licensing Act to remove the requirement to report a loss or theft to the Police before a copy of the document could be issued. It was proposed in Clause 58 to remove the requirement for the need for a licence for exhibition of films in 'community premises' where conditions were satisfied including that the entertainment is not provided for profit and that the audience consists of no more than 500 people. Mr Panto added that a proposal relating to street trading was that appeals of a more general nature would no longer be heard by the Secretary of State but by the Magistrates Court on the grounds that they have more expertise in making such determinations.

- 3.3 The Chairman welcomed Members' comments. He commented that to date he was not aware of too many issues arising from the implementation of the first phase of the deregulation of entertainment licensing. However, there could potentially be some problems with live or recorded music being exempt before 23:00 hours in licensed premises with an audience of up to 500 people if this was introduced. The licensing authority did potentially have powers at a review hearing in respect of live or recorded music if there was evidence to demonstrate that a public nuisance was being caused. In terms of the Deregulation Bill, CANs were likely to be a burden on licensing officers as they would be required to check existing records. Councillor Caplan made the point that there would need to be more definition of community groups who would be exempt from the requirement to have a premises licence. Mr Panto commented that secondary regulations were likely to be provided and also guidance to support the Bill. Councillor Floru expressed the view that there could be increased bureaucracy as a result of implementing the CAN licence process. These included the secondary regulations and local authorities potentially bringing in their own regulations, including whether to reject CANs in their own cumulative impact policy areas. He criticised the excessive regulation required in the suggestion that sellers might only supply limited amounts of customers to their customers such as one 75ml bottle of wine in a room per two night stay or between two adults with a meal.
- 3.4 The Chairman expressed concerns regarding the proposal to remove the requirement to renew a personal licence after ten years. This was likely to remove the mechanism for identifying licence holders who had got criminal convictions for offences but who had not declared them. Deirdre Hayes, Service Manager, Environmental Health Consultation & Licensing, advised Members that direction on this point from the Home Office would be useful as significant officer resource time was required to deal with personal licences. There was a debate around the potential powers to exempt late night refreshment in certain circumstances. Councillor Acton expressed disappointment that the proposals did not seek to address shisha cafes. Councillor Floru asked about the Council's evidence in terms of the link between late night refreshment and alcohol-related crime and disorder. Peter Large, Head of Legal and Democratic Services, advised that the Council had produced specific evidence of the link, including for appeals that the Council had pursued such as one involving McDonalds in Leicester Square. Mr Large also commented on the proposals relating to street trading that it should be very much up to the Council what pitches it chose to designate and de-designate and what fees to set, subject to complying with the law. If the Council got the process wrong, there was the option to judicially review. It was illogical that the Magistrates Court would decide such appeals rather than the Secretary of State as district judges did not have specific expertise in this area. Councillor Harvey raised the point that it would be useful to join licensing officers when they inspected premises in the West End in order to have an increased appreciation of the issues they faced and the impact on the stress area. The Chairman informed her that officers would shortly be contacting Members of the Licensing Committee to invite them to attend inspections of licensed premises.

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

4. LICENSING APPEALS

- 4.1 The Chairman provided a brief introduction, particularly for new Members to the Committee, of the Hemming case relating to sex establishment licensing fees. He emphasised that a particular implication of the case was that it undermined the ability to charge a fee which would enable the Council to recover the cost of enforcement. Members of the Committee noted that a date for the hearing in the Supreme Court had been set for 13 January 2015.
- 4.2 The Committee received a report with the latest information on the appeals that had been submitted in relation to decisions taken by the Licensing Sub-Committee. Mr Large advised that there had not been any recent appeal decisions but there were a number of appeals scheduled to be heard in the near future. In terms of appeals against the decisions of the Sub-Committee taken under the Licensing Act 2003, these included Pleasure Lounge in Rupert Street scheduled for the end of July, La Bodega Negra in Moor Street and Ognisko Polskie in Princes Gate in early September, Le Vieux Comptoir in Moxon Street in late September and Ham Yard Hotel (site surrounded by a number of streets including Denman Street and Great Windmill Street) in late October. Mr Large expressed the view that it was likely that the appeal for Boulevard in Walker's Court would be delayed until the middle of September and be heard at a similar time to the appeal for Avalon in Shaftesbury Avenue.
- 4.3 Mr Large stated there were two upcoming appeal hearings that were not Licensing Act 2003 applications. One was Paddy Power's appeal against the Sub-Committee's decision to refuse the Gambling Act 2005 application for 195-197 Edgware Road scheduled for mid November and the other was a appeal against the revocation of a street trader's licence in respect of Pitches 619 and 620 Church Street Market for which a date in the Crown Court is awaited (the appeal had been dismissed in the Magistrates' Court).
- 4.4 Mr Large also explained the current position at Amika in South Molton Street. The Police had submitted an expedited review in April following a serious incident of crime and disorder. An interim steps hearing had taken place within a couple of working days and the Sub-Committee had taken the decision to suspend the premises licence. The full review had taken place in May and the licence had been revoked. The licensee for Amika then appealed the decision. It is the Council's position that the interim steps imposed by the Sub-Committee continue to apply until the appeal is disposed of. It was understood, however, that the Appellant's legal advice was that the interim steps ceased to have effect after the full review hearing. The premises subsequently operated and sold alcohol. The Police had now applied for a Closure Order and the Council had applied to be heard as an interested party. A date had been set for the hearing of the Closure Order of Friday 11 July.
- 4.5 Councillor Caplan referred to the Council's successful record of defending appeals under the Licensing Act 2003 set out in the report. Mr Large stressed

that the Council was almost always successful on appeal if the decision was consistent with policy. The vast majority of appeals were dismissed, withdrawn or settled. Where applications were settled prior to reaching the Magistrates' Court, this was on terms that were almost always in keeping with the Council's policy. The Committee congratulated Legal on the record of defending appeals. Councillor Toki asked Mr Large about costs relating to appeals. Mr Large replied that where the Council won the case in the Magistrates' Court, it was in the vast majority of cases awarded costs. Where the Council lost, the law stated the other side would not obtain costs (due to the Council being a public authority exercising its public functions) unless it was believed it had behaved unreasonably. It was extremely rare therefore for the Council to have costs awarded against it. There were occasions where costs had been awarded to the Council but these had not been recovered due to the opposing side's business folding.

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

5. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

5.1 The Chairman consented to a matter being raised by Councillor Floru. Councillor Floru asked Committee Members to consider whether there were some unintended consequences of having a strict policy where alcohol was required to be ancillary to food. One potential consequence was that new bars were not being created in certain areas. This was assisting the traditional pubs that were being protected. Patrons were standing outside these pubs drinking and this practice appeared to be increasing, which had been partly due to the smoking ban but not all outside drinkers were smokers. There were implications for residents from outside drinking and he questioned whether the Council's revised policy could look to be more innovative.

5.2 Councillor Mitchell commented in response that residents would also have concerns regarding vertical drinking bars in their communities. Pubs were closing up and down the country due to factors such as taxation and social factors. Both Councillor Mitchell and Councillor Aiken made the point that there were changes to the style of the operation at many pubs with food being more central to what was being offered in the style of gastro pubs. Councillor Mitchell added that it was not the case that the Sub-Committee said no to all the establishments that had applied to sell alcohol which was not ancillary to food. It was necessary to look at applications on their merits. Councillor Caplan stated that there was a distinction between premises in the stress areas and outside the stress areas. There were some new bars opening in the West End. In certain locations outside the stress areas it was the case as Councillor Floru had commented that there were significantly fewer bars opening. Much depended on whether an application was in a residential area and would impact on the residents. Councillor Acton added that the Council always had to be aware of the consequences for the residents in the vicinity if a new trendy bar was permitted and consider when the application was submitted whether the licensing objectives were being promoted.

6. FUTURE LICENSING COMMITTEE MEETING DATES

6.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 19 November 2014 and Wednesday 11 March 2015. Both meetings are scheduled for 10.00am.

7. EXEMPT REPORT UNDER REGULATION 14 OF THE LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

7.1 **RESOLVED:** That under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 the public be excluded from the meeting for the following item of business on the grounds that the report contains legal advice to the Authority which outweighs the public interest in the matter taking place in public.

8. LICENSING ACT 2003 - SECOND OR "SHADOW" LICENCES

8.1 The Committee received a report regarding applications submitted for secondary or "shadow" licences at premises which already hold a licence under the Licensing Act 2003.

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

9. MINUTES

9.1 The confidential minutes of the Licensing Committee meeting held on 12 March 2014 were agreed as a correct record and were signed by the Chairman.

9.2 The Chairman thanked his predecessor Councillor Audrey Lewis for her major contribution to licensing at the Council, including on behalf of the Licensing Committee and Licensing Sub-Committee, prior to becoming Lord Mayor. He advised Members attending their first Licensing Committee meeting to get in touch with him or officers if they had any queries.

9.3 Councillor Floru requested that the name of the case officer was included on all Licensing Sub-Committee reports whether these were applications under the 2003 Licensing Act or those under different legislation.

9.4 **RESOLVED:** That the name of the case officer be included on all Licensing Sub-Committee reports.

10. CLOSE OF MEETING

10.1 The meeting ended at 11.25pm.

Chairman

Date



Licensing Committee Report

| | |
|---------------------------|---|
| Meeting: | Licensing Committee |
| Date: | 19 November 2014 |
| Classification: | For General Release |
| Title: | Guidance on the Filming of Licensing Sub-Committee meetings and the exclusion of the public from Licensing Sub-Committee meetings |
| Wards Affected: | All |
| Financial Summary: | None |
| Report of: | The Head of Legal and Democratic Services |

1. Executive Summary

- 1.1 This report includes guidance to the Licensing Committee with regard to the filming of Licensing Sub-Committee meetings and the exclusion of the public from Licensing Sub-Committee meetings.

2. Recommendations

- 2.1 That the Committee notes the guidance document attached as Appendix A to this report.
- 2.2 That the Committee agrees the recommendation in paragraph 16 of the guidance document (to amend all the rules of procedure that apply to hearings before the Licensing Sub-Committee so as to include a detailed rule on the process for the determination of requests to film the proceedings).
- 2.3 That the Committee agrees the recommendation in paragraph 25 of the guidance document (to adopt a protocol for the exclusion of the public when the Licensing Sub-Committee is dealing with a review application under the Licensing Act 2003 or any other applications where the police express concern that public disclosure may prejudice the investigation or prosecution of crime).

3. Background

- 3.1 There have been requests received in recent weeks to film the proceedings of a Licensing Sub-Committee meeting. It is generally considered that the filming of such meetings should be allowed in accordance with the principles of transparency and accountability that apply to all public bodies. However, the Openness of Local Bodies Regulations 2014 that came into force on 6th August 2014 have caused some confusion in asserting that there is a right to film all local authority meetings.
- 3.2 The first part of the guidance document attached explains why those regulations do not apply to meetings of the Licensing Sub-Committee which are dealing with applications under the Licensing Act 2003 but also seeks to recognise that special rules need to apply whenever a Licensing Sub-Committee is conducting a public hearing where evidence is given by the parties involved.
- 3.3 The guidance document explains the legal issues and then proposes that all rules of procedure that apply to hearings before the Licensing Sub-Committee are amended so as to remove any suggestion that there is an automatic right to film and take photographs at such hearings but to also set out the criteria that will be used to determine whether filming and the taking of photographs of the hearing will be allowed.
- 3.4 The proposed amendment to the rules will require all parties to be consulted about the request to film the hearing and to be given the right to opt out of being filmed or photographed. The Chairman will have the final say as to whether any filming or photography is to be allowed and can give such instructions in that regard as he or she deems appropriate. An overriding principle is that any filming or photography that does take place must not impede or disrupt the conduct of the proceedings in any way.
- 3.5 The second part of the guidance document addresses the circumstances in which it might be possible to exclude the public from a meeting of a Licensing Sub-Committee. The default position is that all meetings of the Licensing Sub-Committee are open to the public and all reports can potentially be seen and read by the public. However, it is recognised that there are some applications before the Licensing Sub-Committee where the police may ask for the public to be excluded so as not to prejudice their investigation and possible prosecution of criminal activity by persons who are involved in some way with the premises under consideration.
- 3.6 The recommendation is for a protocol to be adopted whenever an application is received from the police for a standard review of a premises licence or a club premises certificate or for a summary (expedited) review of a premises licence so as to determine whether the public should be excluded from the hearing and also to ensure that confidential information is not accidentally disclosed by publishing it in the licensing register or on the Council's website. The guidance also recognises that a modified version of the protocol might apply when the police ask for the public to be excluded from a meeting that does not involve a review of the licence.

4. Financial and Legal Implications

- 4.1 There are no financial implications and the legal implications are set out in the body of the guidance document attached.

If you have any queries about this report or wish to inspect any of the Background Papers please contact: Barry Panto in Legal and Democratic Services on 020 7641 2712 or email bpanto@westminster.gov.uk.

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Westminster City Council

Report to the Licensing Committee

The Filming of Licensing Sub-Committee meetings. Excluding the public from Licensing Sub-Committee meetings.

Appendix A - Guidance on the approach to be adopted

The Filming of Licensing Sub-Committee meetings.

1. The Openness of Local Government Bodies Regulations 2014 came into force on 6th August 2014. They were made pursuant to sections 40 and 43(2) of the Local Audit and Accountability Act 2014. Section 40 of the Local Audit and Accountability Act 2014 gives the Secretary of State power, by regulations, to make provision for allowing persons to film, photograph or make sound recordings of proceedings of meetings of local authorities; for allowing those not present at meetings to see and hear the proceedings; and for allowing reporting and commentating on the proceedings.
2. The question arising in this part of the guidance is the right of people to film and take photographs at hearings of the Licensing Sub-Committee.
3. The Openness of Local Government Bodies Regulations 2014 appear to give a right to film all Committee and Sub-Committee meetings which members of the public can attend. On the face of the regulations, that seems to include all Licensing Sub-Committee meetings.
4. Nothing is contained in the plain English guide to the regulations issued by the DCLG (which is not classed as statutory guidance) that excludes such meetings from the application of these new provisions. In fact, that guide states that councils and other local government bodies are required to allow any member of the public to take photographs, film and audio-record the proceedings, and report on all public meetings. It further states that, while no prior permission is required to carry out this activity, it is advisable that any person wishing to film or audio-record a public meeting let their local government staff know so that all necessary arrangements can be made for the public meeting.

5. The Openness of Local Government Bodies Regulations 2014 achieve their purpose by amending Part VA of the Local Government Act 1972 which (by virtue of a complicated legislative process)¹ does not apply to any functions of the licensing authority under the Licensing Act 2003.
6. Section 7 of the Licensing Act 2003 provides that all matters relating to the discharge by a licensing authority of its licensing functions are referred to its Licensing Committee and section 10 provides that the Licensing Committee may arrange for the discharge of any of its functions by Sub-Committee.
7. Section 9 of the 2003 Act states that regulations may make provision about proceedings of the Licensing Sub-Committee; public access to those meetings and agendas, records and other information about those meetings; and publicity to be given to those meetings. Subject to the Licensing Act 2003 (Hearings) Regulations 2005, the Licensing Committee can regulate its own procedure and that of its Sub-Committees. Nothing in the Hearings Regulations 2005 or the Council's own rules of procedure specifically permits or prevents the recording or filming of Sub-Committee hearings.
8. Despite the fact that the 2014 Regulations do not apply to any functions of the licensing authority under the Licensing Act 2003, it is considered that the filming of Licensing Sub-Committee meetings should generally be allowed subject to a number of criteria to reflect the fact that the Licensing Sub-Committee is conducting public hearings where evidence is given by the parties involved. These proceedings are not judicial hearings as such. They are technically regarded as administrative hearings to reflect the fact that the hearing is conducted as a discussion that is led by the authority. Parties can give evidence but cross-examination is rarely allowed.
9. The plain English guide to the 2014 Regulations provides as follows:

The council or local government body should consider adopting a policy on the filming of members of the public, and ensure that they protect children, the vulnerable and other members of the public who actively object to being filmed, without undermining the broader transparency of the meeting.

¹ In accordance with section 100E(3)(a) of the 1972 Act, Part VA only applies to Committees and Sub-Committees appointed under section 102 of the 1972 Act. Section 102 provides that a local authority can appoint a sub-committee for the purpose of discharging any function in pursuance of arrangements made under section 101 of the 1972 Act. Section 101(15) provides that nothing in section 101 applies in relation to any function of a licensing authority under the Licensing Act 2003.

10. The DCLG guide does recognise that there may be circumstances where members of the public attending the meeting may want to object to being filmed and also recognises that there might be other circumstances where filming should possibly be restricted. Because of the special nature of the hearings held under the Licensing Act 2003, it is considered that a similar approach to the public filming and recording of such hearings should be adopted to the one adopted by the Courts. That means that the proceedings should not be filmed as of right because the filming itself could interfere with the “quasi-judicial” process. Some witnesses may be reticent in giving their evidence or may even be reluctant to give evidence at all if the proceedings are being filmed. Knowledge of such a procedure may even result in some people deciding not to make any representations in the first place.
11. The purpose of this guidance is to suggest an amendment to the rules of procedure for all hearings before the Licensing Sub-Committee so as to remove any suggestion that there is an automatic right to film and take photographs at hearings of the Licensing Sub-Committee but also to set out the criteria that will be used to determine whether filming and the taking of photographs of the hearing will be allowed.
12. So far, this guidance has been addressing the situation where a hearing is held concerning the functions of the licensing authority under the Licensing Act 2003. It has been explained that the new 2014 regulations do not apply to such hearings. However, the new regulations will technically apply to hearings in front of the Licensing Sub-Committee that consider applications under any other legislation, including the Gambling Act and applications for a sex establishment licence under the Local Government (Miscellaneous Provisions) Act 1982. Although they will be determined by the Licensing Sub-Committee, they are not functions under the Licensing Act 2003 and, consequently, section 101(15) does not come into play. This is the provision referred to in the footnote on page 2 of this guidance note.
13. Different statutory regulations apply to hearings that are held pursuant to the Gambling Act 2005. In addition, functions under legislation other than the Licensing Act 2003 and the Gambling Act 2005 are subject to different rules of procedure. In particular, the Council has specific rules of procedure for dealing with applications for sex establishment licences pursuant to the Local Government (Miscellaneous Provisions) Act 1982. Nothing in those regulations or rules of procedure specifically permits or prevents the recording or filming of Sub-Committee hearings.

14. Special considerations have to be taken into account if the Licensing Sub-Committee is considering an application for the grant, renewal or transfer of a sex establishment licence under the Local Government (Miscellaneous Provisions) Act 1982. Although the objectors to an application for a sex establishment licence are not entitled as of right to be heard under the 1982 Act, in practice they are usually heard if they do wish to give evidence. However, the licensing authority is not allowed to reveal the name or address of any objector to the applicant without his or her consent. There would be considerable concern if anyone attempted to film such persons on the basis that they are free to do so in accordance with the Openness of Local Government Bodies Regulations 2014.
15. It has been mentioned above that the plain English guide issued by the DCLG does recognise that, even where the new regulations apply, there may be circumstances where members of the public attending the meeting may want to object to being filmed and also recognises that there might be other circumstances where filming should possibly be restricted. Neither the 2014 regulations nor the plain English guide appear to have considered whether the new provisions should apply to hearings contemplated by this guidance, whether under the Licensing Act 2003 or other licensing legislation. In those circumstances, it is considered to be appropriate to amend all the rules of procedure that apply to any hearings before the Licensing Sub-Committee so as to set out the criteria that will be used to determine whether filming and the taking of photographs of the hearing will be allowed.
16. It is recommended that all rules of procedure that apply to hearings before the Licensing Sub-Committee are amended to include the following:

The right to film photograph or make sound recordings of the hearing

- a) The filming and taking of photographs at any hearing of the Sub-Committee is not allowed without the express permission of the Chairman. Permission will usually be granted but may be subject to restrictions to protect children, the vulnerable and other members of the public who actively object to being filmed, without undermining the broader transparency of the meeting;
- b) A request to film or take photographs or make a sound recording should be made as early as possible in advance of the hearing, bearing in mind that it might not be possible to accede to a late request if that has the effect of delaying the consideration of matters on the agenda;
- c) All parties to any application or matter being considered at the hearing and who are present at the hearing will be consulted regarding any request to film or take photographs or make a sound recording of the hearing;
- d) No filming, photography or sound recording will be allowed of any person under the age of 18 years of age;

- e) No filming, photography or sound recording should be allowed of any party or witness (including their representatives) unless they have given their consent in writing;
- f) No person should be put under any pressure to give consent and no payment shall be made for the giving of such consent;
- g) The Chairman will have the final say as to whether any filming, photography or sound recording is to be allowed (either generally or in relation to a particular individual or group of persons);
- h) Any filming, photography or sound recording that does take place must not impede or disrupt the conduct of the proceedings in any way;
- i) All instructions given by the Chairman regarding the filming, photography or sound recording of the hearing must be complied with in full.

Excluding the public from Licensing Sub-Committee meetings.

- 17. This part of the guidance addresses the circumstances in which it might be possible to exclude the public from a meeting or part of a meeting of a Licensing Sub-Committee. The default position is that all meetings of the Licensing Sub-Committee are open to the public and all reports can potentially be seen and read by the public, including cases where criminal allegations are made and proceedings are pending.
- 18. Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 states that the hearing shall take place in public, but that the licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
- 19. Regulation 14 is the provision that is relied upon when members of the Sub-Committee decide to retire to consider their decision. In practice, the members leave the meeting room rather than excluding the public but the outcome is the same. Members are not obliged to exclude the public when reaching a decision but legal advice is that they can do so if they wish.
- 20. Apart from the above, there is rarely any need to exclude the public from any hearings of the Licensing Sub-Committee. In most cases, members of the public can attend and watch proceedings and can also have access to reports on the Council's website. However, the police do sometimes seek to exclude the public when they have instituted review proceedings and especially when they have made an application for a summary review under section 53A of the 2003 Act in circumstances where the police are at the early stages of their investigation.

21. The purpose of this part of the guidance is to ensure that there is a protocol in place to prevent details of any review hearing being published either on the licensing register or the Council's website which will disclose details of the evidence to the public before the police have had an opportunity to ask for that information to remain confidential.
22. A record of the various applications made to the licensing authority and notices given to the authority must appear in the licensing register kept by the authority pursuant to section 8 of the 2003 Act. The register will usually include copies of the applications and notices. The Licensing Act 2003 (Licensing Authority's Register) (Other Information) Regulations 2005 further provide that the register must include the ground or grounds for any review of a premises licence that may be made under section 51 of the 2003 Act.
23. Where an application is made for a summary review of a premises licence under section 53A of the 2003 Act, the register must record the fact that such an application has been made and that it has been made on the basis of the opinion of a senior police officer that the premises are associated with serious crime or serious disorder or both.
24. Copies of the reports to be considered by a meeting of one of the Council's Licensing Sub-Committees are usually placed on the Council's website a few days in advance of the meeting. There is no statutory obligation to do this in the case of any applications made pursuant to the Licensing Act 2003 as that legislation is not subject to the access to information provisions contained in Part VA of the Local Government Act 1972 (for the reasons set out in the footnote to the first part of this guidance).
25. The recommendation to the members of the Licensing Committee is that the following protocol is adopted whenever an application is received from the police for a standard review of a premises licence or a club premises certificate or for a summary (expedited) review of a premises licence:
 - a. The licensing service will seek to ascertain from the police whether any part of the evidence supporting the application needs to be excluded from public access.
 - b. If the police do initially ask for evidence to be excluded or the licensing service has not been able to ascertain the views of the police, the grounds for the review will be included in the licensing register but the application for review will not be attached. In addition, the report to the Licensing Sub-Committee will not be placed on the Council's website until the hearing or first hearing of the matter before the Licensing Sub-Committee so as to give the police the opportunity to ask for the hearing to be conducted in private.

- c. The only basis for asking for the matter to be heard in private is that the public interest in excluding the public outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
 - d. There is no legal power to exclude the public simply because the review application includes details of the crime and disorder that has allegedly taken place or because the report discloses the names of persons who may be prosecuted, either for breaches of the licensing legislation itself or for other, possibly more serious, offences.
 - e. The usual reason for such a request being made by the police is that any public disclosure of the evidence at that stage of their investigation might prejudice the ongoing conduct of that investigation. The public will obviously have to be excluded from the meeting to enable the Sub-Committee to determine the request itself in private. Assuming that the Sub-Committee does accede to the request from the police, that item on the agenda will then be considered in private and no record of the confidential information will be included in any public record of the decision or in any other public document.
 - f. If the police do not seek to exclude the public at the first hearing of a review application, the item will be considered in public and a copy of the report and any decision relating to the item will be placed on the Council's website.
 - g. Irrespective of any application that may be made by the police to exclude the public, measures must always be taken to ensure that any copies of reports that are made available to the public, including any reports that are published on the licensing register or the Council's website, do not contain the names or addresses of any victims of alleged criminal activity, especially if they are children or alleged victims of sexual assaults.
26. There may be other circumstances where the police will ask for a particular matter to be considered in private. It may be, for example, that the police oppose an application for a new premises licence or a personal licence under the Licensing Act 2003 because there is an ongoing investigation and are concerned that any public disclosure of their evidence will prejudice that investigation. The public interest test described above in paragraph 18 will apply to such matters in the same way that it applies to review hearings.
27. For applications under the Gambling Act 2005, the statutory regulations provide that the hearing must take place in public unless the Sub-Committee is satisfied that it is necessary, in all the circumstances of the case, that all or part of the hearing must be held in private. In reaching such a decision, the Sub-Committee must have regard to (a) any unfairness to a party that is likely to result from a hearing in public; and (b) the need to protect as far as possible, the commercial or other legitimate interests of a party.

It is not considered that the police are likely to ask for a matter under the Gambling Act to be considered in private but, if such a request is made, the Sub-Committee can also have regard to the exempt information provisions contained in Part VA of the Local Government Act 1972 which provide that the public can be excluded if it is likely that there will be disclosure of exempt information as set out in paragraph 7 of Schedule 12A to the 1972 Act, namely any information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

28. For applications under other legislation, such as applications relating to sex establishments under the Local Government (Miscellaneous Provisions) Act 1982, the exempt information provisions in Part VA of the Local Government Act 1972 will also apply so as to allow the public can be excluded if it is likely that there will be disclosure of any information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
29. If the police do ask for a report to be dealt with as a confidential matter in advance of the first hearing relating to any of the scenarios mentioned in paragraphs 26 to 28 above, a modified version of the protocol can apply so as to ensure that no confidential information is placed on the licensing register or the Council's website until the request has been considered by members of the Licensing Sub-Committee at that first hearing.



City of Westminster

Licensing Committee Report

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|---------------------------|--|
| Meeting: | <i>Licensing Committee</i> |
| Date: | <i>19 November 2014</i> |
| Classification: | <i>For General Release</i> |
| Title: | <i>Licensing Act 2003 – Statement of Policy Review</i> |
| Wards Affected: | <i>All</i> |
| Financial Summary: | <i>None</i> |
| Report of: | <i>Director of Strategy and Communications</i> |

1. Executive Summary

- 1.1 This report advises the Committee of the forthcoming review of the Statement of Licensing Policy under the Licensing Act 2003.

2. Recommendations

- 2.1 That the Licensing Committee note and comment on the report.

3. Background

The Licensing Act 2003 (the Act) regulates licensable activities at premises in the city. Licensable activities are:

- The sale by retail of alcohol
- The supply of alcohol at a members club
- The provision of regulated entertainment, including live and recorded music, indoor sports, films and plays.
- The provision of late night refreshment i.e. the provision of hot food and hot drink between the hours of 23.00 and 05.00.

Section 4 of the Act requires the licensing authority to carry out its functions under the Act with a view to promoting the licensing objectives. The licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In carrying out its licensing functions a licensing authority must also have regard to its statement of licensing policy, and guidance issued by the Secretary of State.

Section 5 of the Act requires a licensing authority to prepare and publish a statement of licensing policy at least every 5 years. During this period the policy must be kept under review and the licensing authority may make revisions to its policy in order to promote the licensing objectives.

Scope and timetable of the Review

The policy review will cover all aspects of existing policy which may be raised during the public consultation period, but is proposed to have 4 specific elements as follows:

1. Update the policy to acknowledge and reflect changes in licensing legislation.

This will include the establishment of Sexual Entertainment Venue (SEV) licensing, the introduction of the Live Music Act, EMROs and Late Night Levy, and the designation of Public Health as a Responsible Authority under the Act.

2. Update the evidential base on which the policy is based.

This will include assessing existing evidence sets, such as police crime data and noise nuisance complaints, as well as adding other relevant data where this is

available. This may include LAS emergency call-out data, Emergency Department Hospital data or data relating to anti-social behaviour patterns.

It may also include an update of demographic and licensed premises data both in total, by premises type and geographic spread, where this data is available.

Recently commissioned research into the evening and night time economy (ENTE) will be significant, as will the extent to which the council can overcome the challenges of data sharing with other stakeholders in the ENTE.

3. Assess policy issues which have been identified by stakeholders in the licensing process.

This will include comments from the licensing committee and officers in licensing, police, public health, environmental health, trading standards, planning and city management. It will also include issues raised by licensed businesses and resident groups and individuals, including for example a review of stress area boundaries.

4. Assess policy issues against corporate policy aims and objectives.

This will take into account possible contributions to developing Better City Better Lives, and take into account other policy development in the city, for instance the City Plan, and recommendations of the West End Commission. It is essential that licensing policy is integral to, and consistent with, other policies for the city, both in the West End and other parts of the city. This will include Westminster policies relating to crime reduction, planning, tables and chairs, drug abuse, childrens' services and public health, and policies developed with partner organisations and other stakeholders. These will include joint protocols with the police, or policy development in conjunction with the Mayor, BIDs, TfL, and other local authorities. Although responsibility for the publication of the statement of licensing policy falls within the portfolio of the Cabinet member for Public Protection, the implications of the policy, however, impinge on the majority of cabinet member portfolios.

Proposed timetable

The proposed timetable for the review of the licensing policy is:

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|--------------|--|--|
| 26 August 14 | Briefing on scope of review | SEB |
| Sept 2014 | Briefing and discussion | Cabinet member and Chairman of Licensing Ctte |
| 8 October 14 | Briefing and discussion | Licensing Committee |
| Nov/Dec 2014 | Drafting of consultation documents | Chris Wroe |
| Dec 2014 | Sign off of draft consultation documents | Cabinet member in consultation with Chairman of Licensing Ctte and Cabinet |

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|--|---|---|
| Dec/Jan 2014 to Feb/March 2015 (12 weeks) | Formal Public consultation, to include meetings with resident association representatives, Westminster Entertainment Forum meetings and representatives of licence holders. | Chris Wroe |
| March/April 2015 | Assessment of consultation responses and draft statement of policy prepared | Chris Wroe |
| May 2015 | Approval of draft statement of policy | Cabinet member in consultation with Chairman of Licensing Cttee and Cabinet |
| 20 th May 2015 | Adoption of revised statement of policy | Council |
| 1 June 2015 | Publication of revised statement of policy | Chris Wroe |

Financial and Legal Implications

Funding of licensing policy development under the Act is currently largely funded out of revenue budget in City Planning. This responsibility is however subject to an ongoing central government review of licensing fees. Government are currently assessing consultation responses to proposals to give local authorities greater freedom to set fees at a level to cover licensing costs, and the government response to the consultation is awaited.

Legal implications are set out in this report.

If you have any queries about this report or wish to inspect any of the Background Papers please contact: Chris Wroe, Licensing Policy and Strategy Manager on 020 7641 5903 or email cwroe@westminster.gov.uk.

BACKGROUND PAPERS

Licensing Act 2003

Amended Guidance issued under section 182 of the Licensing Act 2003 - June 2014



City of Westminster

Licensing Committee

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| Item No: | |
| Date: | 19 November 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 To date, 454 appeals have been heard / settled / withdrawn:

- 16 allowed
- 11 allowed only in part
- 54 dismissed
- 208 withdrawn
- 165 settled

4. Licensing Act 2003 Appeals

4.1 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 5 days commencing 27 October 2014 at Westminster Magistrates' Court.

Subsequently a formal offer of compromise was put forward by the Appellant in an open letter, involving a later hour for the fourth floor terrace, and for the ground floor bar. That offer was considered by the Licensing Sub-Committee, and rejected. Upon being advised of the Sub-Committee's decision to refuse settlement, the appellants withdrew their appeal and agreed to pay the City Council's costs of £25,000.

4.2 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 was scheduled to take place on 21 and 22 July 2014 at Westminster Magistrates' Court. The Appellant's representatives advised of the withdrawal of the appeal prior to the full hearing commencing.

4.3 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. The full hearing of the appeal was held on 24th, 25th and 28th July 2014 at Westminster Magistrates' Court. The Appellant had served no evidence and failed to comply with any of the Court Directions. Neither the Appellant nor their instructing solicitor attended the hearing. Instead, Counsel had been instructed to attend and request an adjournment following the refusal of a previous written request for an adjournment. The District Judge

refused to adjourn the hearing. Counsel instructed on behalf of the Appellant was without further instruction. In the circumstances, the Judge dismissed the appeal and awarded full costs to the City Council in the sum of £23, 155.22.

4.4 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 was lodged by the Applicant's and a date for the full hearing of the appeal was scheduled for 4th, 5th and 8th September 2014 at Westminster Magistrates' Court. Prior to the full hearing taking place, the Appellant solicitors advised of their instruction to withdraw the appeal.

4.5 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 Appellant made a compromise proposal, under which the licence would be amended to permit a restaurant with bar, and that offer was considered and rejected by the Licensing Sub-Committee. The full hearing of the appeal took place on 18th, 19th and 22nd September 2014 at Westminster Magistrates' Court. At the hearing the Appellant's case was that the licence should not be revoked, but should be amended to permit a restaurant with no bar, and with a 1am terminal hour. The City Council's position was that the appropriate course was for the Court to dismiss the appeal and for the Appellant to submit a new application for a licence for the proposed establishment. The appeal concluded on the 22nd September and judgment was reserved. Judgment has since been received dismissing the appeal. A costs hearing is scheduled to take place on 21 November 2014.

4.6 La Bodega Negra, 14-16 Moor Street / 9 Old Compton Street

By application received on 2 December 2013 Moor Street Limited applied to vary the premises licence of La Bodega Negra, 14-16 Moor Street, London W1D 5NN. The variation application sought:

To vary condition 10 from the existing licence from:-

"The premises shall only operate as a restaurant:

- (i) in which customers are shown to their table, except in the areas marked taqueria and brasserie on the ground floor plan.*
- (ii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery except in the areas marked taqueria and brasserie on the ground floor plan.*

(iii) *which do not provide any take away service of food after 11pm for immediate consumption except as part of room service to the hotel rooms, and*

(iv) *where intoxicating liquor shall only be sold, supplied or consumed on the premises to persons who are bona fide taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals OR to:*

- *Those who are waiting to dine or have already dined or to*
- *Persons attending a pre-booked private or corporate function up to 20 times per annum and/or*
- *Hotel residents and their bona fide guests”*

To:

“(a) *With the exception of the hatched bar areas, of **both** the ground floor (Moor Street) and basement (Old Compton Street) plans where up to 12 customers are permitted to purchase alcohol without food, the premises shall only operate as a restaurant: (Total 24 customers).*

(i) *in which customers are shown to their table, except in the areas marked taqueria and brasserie on the ground floor plan;*

(ii) *which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, except in the areas marked taqueria and brasserie on the ground floor plan;*

(iii) *which do not provide any take away service of food after 11pm for immediate consumption except as part of room service to the hotel rooms, and*

(iv) *where intoxicating liquor shall only be sold, supplied or consumed on the premises to persons to are bona fide taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals OR to:*

- *those who are waiting to dine or have already dined or to*
- *persons attending a pre-booked private or corporate functions up to 20 minutes per annum and/or*
- *hotel residents and their bona fide guests.”*

(b) The hours that the customers (referred to in A above) are permitted to purchase alcohol without food from the ground floor bar area (hatched on the plan) and the basement bar area (hatched on the plan) shall be:

Monday – Sunday 10:00 to 22:30 inclusive

Those customers shall be required to leave the premises by 23:00

(c) The availability of alcohol without food shall not be promoted or advertised externally.

The Licensing Sub-Committee considered the application on 30 January 2014. The Sub-Committee did not consider that there were exceptional reasons for granting the application. The Sub-Committee did not accept that the reduction in hours during which the concession would apply would make any difference as that could still result in up to 24 non-dining customers leaving the premises at 11 pm which was late enough to cause a problem. The Sub-Committee was of the view that this application would add cumulatively to the problems being caused in the area. It fully endorsed the decision taken on 31st October 2013 and did not think that the reduced hours sought in this application were sufficient as to justify the granting of the application as an exception to policy.

The hearing of the appeal took place on 1st and 2nd September 2014, and the appeal has been allowed. The District Judge concluded that an exception to Policy was justified on the basis that the premises were exceptionally well run, and the small number of customers permitted to drink without a meal would not add to problems of cumulative impact. He made no order as to costs.

4.7 Le Vieux Comptoir, Basement, 20 Moxon Street

The premises operate on the ground and lower ground floor levels as a retail shop / delicatessen / café providing on and off sales of alcohol. The premises currently benefit from a premises licence that permits the 'On' sale of alcohol Monday to Sunday to 20.00 and the 'Off' Sale of alcohol Monday to Sunday to 22.30. By application received on 31 October 2013 Bubbles and Wine Limited applied to vary the premises licence of Le Vieux Comptoir, 20 Moxon Street, London W1. The variation application sought to extend hours for licensable activities to 23.00 on Monday to Saturday and 22.30 on Sunday. The application also sought the amendment of various conditions including an increase in the numbers of persons permitted in the basement from 50 to 75.

Objections were received to the application from the Environmental health Service, one Councillor and four local residents.

The Licensing Sub-Committee considered the application on 16 January 2014. Having heard submissions from the licensee and from the objectors, the Sub-Committee considered that the original decision in November 2012, including the conditions attached to the licence, had proved to be correct. Taking into account the evidence received regarding noise emanating within the premises, it was clear that the licensing objectives would be undermined if the proposed licensable activities and the increased hours were granted at this residential location. The application was therefore refused.

Notice of appeal was lodged by the licensee and a date for the full hearing of the appeal was scheduled for 25th, 26th and 29th September 2014. Prior to the full hearing taking place, the Appellant's advised of the withdrawal of their appeal.

4.8 Amika, 43 South Molton Street, London W1

By application dated 24 April 2014, the Metropolitan Police applied to review the premises licence for Amika, 43 South Molton Street, London W1 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 an incident at the premises on Monday 21st April 2014 at approximately 02:10. The disorder appears to have been between two groups of males at different tables in the basement area of the venue. The fight included bottles being thrown and being used to hit people. This resulted in a customer being the victim of a glass enabled GBH, where he was hit in the face by a piece of glass from a smashed bottle. CCTV shows that the disorder continued inside the venue for 13 minutes including serious disturbances at the entrance where persons are seen throwing glasses and bottles from inside (CCTV footage shows persons in the foyer picking up glasses and bottles from the reception desk and throwing them out of the premises through the door). Simultaneously, males outside the premises are seen fighting with metal poles and ropes.

After the sustained attack, the doors of the premises are breached and both groups who ran towards Oxford Street. It was at this point that Police were called by the premises. The fighting continued in Davies Street and Oxford Street where males attacked several vehicles with metal poles as they drove by.

The management and security had no control of the premises and were unable to prevent the escalating serious disorder and violence.

No suspects were detailed, victims were not identified and First Aid was not given. The scene of the disorder both inside and outside was cleared immediately and the Police were not called until after all parties involved had left the premises.

The Metropolitan Police were of the view that the level of the disorder and violence during this incident was so serious that it represented significant failings in upholding and promoting the Licensing Objectives.

An expedited hearing of the Licensing Sub-Committee was held on 29 April 2014 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 19 May 2014. The Sub-Committee heard submissions from the licensee and from the Metropolitan Police. The Sub-Committee heard that the Licensee's premises had previously been located in Kensington High Street where a review of the premises licence had taken place and the hours on the licence had been cut back and that the decision was upheld on appeal. The Licensee had then re-located to South Molton Street and had opened there in April 2012. The current full review was the second at South Molton Street and the third the Licensee had been involved in. Conditions had been attached to the licence by the Sub-Committee at the review in August 2013 and then further conditions had been attached in April 2014 as a result of a minor variation following incidents including a glassing and a stabbing in February 2014. Mr Rankin, on behalf of the Metropolitan Police, commented that the minor variation had resulted from an informal review by the Police where the Police would have considered taking matters further had the Licensee not consented to agreeing the conditions.

Based on all the evidence heard the Sub-Committee unanimously agreed, in keeping with the view of the Sub-Committee at the interim stage, that they had no confidence in the Licensee and/or the management of the premises. The Sub-Committee considered it was appropriate to revoke the premises licence.

Notice of appeal was lodged on behalf of the Licensee and the full hearing of the appeal was listed for 9, 10, 14 and 16 October 2014 at Westminster Magistrates' Court.

It is the Council's position that the interim steps imposed by the Licensing Sub-Committee on 29 April 2014 continue to apply until the appeal has been disposed of. However, it is understood that the Appellant's legal advice is that the interim steps ceased to have effect after the Licensing Sub-Committee hearing on 19 May 2014. The premises were found operating and selling alcohol on 27th May which resulted in the service of a section 19 notice by Metropolitan Police. The Metropolitan Police then sought a section 20 Closure Order at the Magistrates' Court. The City Council were joined as an Interested Party to the Closure Order Proceedings. The full hearing of the Closure Order was held on 11 July 2014 at Westminster Magistrates' Court. Judgment was reserved and subsequently handed down confirming the grant of the Closure Order.

The Appellant's representative subsequently advised of their instruction to withdraw their appeal against the decision of the Licensing Sub-Committee. A costs hearing is scheduled for 21 November 2014 for costs orders in respect of both Closure Order proceedings and appeal proceedings.

5. GAMBLING ACT 2005

5.1 Paddy Power, 195-197 Edgware Road, W2 1EY

On 29th January 2014 an application, made under the Gambling Act 2005, was received for a new betting shop at 195-197 Edgware Road, W2 1EY (ground floor only). The application received twenty three representations against it.

The application was considered by the Licensing Sub-Committee on 9 April 2014. The Sub-Committee were most concerned about the location of these premises in this specific area and did not think that the applicant had adequately assessed the area or identified any measures to specifically address concerns about homeless and other vulnerable persons living in close proximity to the premises. The Sub-Committee did not believe that they would be undertaking their responsibilities correctly if they did not take into account the evidence received which appeared to demonstrate that granting the application would add to vulnerable persons being harmed or exploited by gambling. The Sub-Committee refused the application.

Notice of appeal against the decision of the Licensing Sub-Committee was lodged by the applicants and the full hearing of the appeal was scheduled for 17 to 20 November 2014 at Hammersmith Magistrates' Court. In preparation for the appeal hearing, an analysis of the Council's evidence and the research relied upon was undertaken and a number of inconsistencies were found. Following an exchange of evidence, the Appellant's wrote to the City Council highlighting the inconsistencies in the City Council's material and offering to claim no costs if the City Council conceded to the grant of the licence. Counsel's advice was sought and the matter was referred back to Licensing Sub-Committee for consideration. The Sub-Committee authorised the compromise of the appeal on the terms proposed.

6. CITY OF WESTMINSTER ACT 1999

6.1 Pitches 619 and 620 Church Street Market

Mr Mahmadin Lalludin has been licensed for the sale of toys from Pitches 619 and 620 on Saturdays in Church Street Market since July 2011. The weekly charge for the street trading licence is £24.40 in respect of each pitch.

Throughout 2012 and 2013 Mr Lalludin repeatedly failed to pay his street trading fees when due and only made block payments upon the threat of revocation of his street trading licences. Following numerous warning letters and referrals to the Licensing Officer Panel for arrears on his account, Mr Lalludin was invited to attend a Licensing Officer Panel in October 2013 where the revocation of his licence would be considered.

On 29 October 2013, Mr Lalludin attended the Panel hearing. He claimed not to have received the invoices for August, September or October 2013 and that he had been unaware of the arrears. He also said that he had been out of the country for one week, visiting his mother, who was unwell, in Afghanistan.

The Panel advised Mr Lalludin that the letter of invitation to the Officer Panel Hearing had included details of the arrears on his account and that, even if he had not received any of the previous invoices, he would have been aware of the arrears on his account three weeks prior to the Panel hearing and yet had not made any attempt to clear them. The Panel explained to the Appellant that convening a Licensing Officer Panel was a costly process, and that it was not a tool for repeatedly and continually chasing persistent arrears.

The Panel decided to revoke the Appellant's street trading licensing in respect of Pitches 619 and 620 Church Street Market on grounds that he had, for a period of four weeks or more, failed to pay fees due to the Council, and that he had persistently failed to pay fees or charges as they fell due to the Council.

On 21 November 2013 the Appellant lodged an appeal to the Magistrates' Court against the decision to revoke his licence. The full hearing of the appeal was heard at the City of London Magistrates' Court on 5 June 2014. Mr Lalludin attended Court, he was not represented. He advised the Bench that he had paid all of his fees and therefore his licence should not be revoked. Counsel for the City Council advised the Court that even throughout the appeal period Mr Lalludin had fallen into arrears on his account and failed to make payments on time. Having heard from both the Appellant and the Respondent, the Bench dismissed the appeal and awarded costs in full to the Respondent. Mr Lalludin immediately advised that he would appeal to the Crown Court. In response, the Magistrates warned Mr Lalludin of the further cost implications of such an appeal and the likelihood of further costs being awarded against him.

An appeal to the Crown Court was subsequently received and the matter was listed for full hearing on 23 September 2014 at the Central Criminal Court. Having heard from Mr Lalludin and from Deirdre Hayes on behalf of the City Council, the Court dismissed the appeal and awarded costs to the City Council in the sum of £2052.00.

7. JUDICIAL REVIEWS / CASE STATED

7.1 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. Applications to intervene have been submitted on behalf of the Bar Council, the Law Society, the Architects Registration Board, the Solicitors Regulation Authority, the Bar Standards Board, the Care Quality Commission and the Farriers Registration Council. A conference with Counsel was held to discuss procedural issues and how best to deal with intervenors. The LGA had been invited, and attended, the conference part way through to discuss the possible role of the LGA. It was agreed that WCC would instruct a Licensing Counsel to assist those already instructed to deal with any licensing issues and research regimes that may be impacted.

The LGA have subsequently advised us that they have been advised by Counsel to apply to intervene by making written submissions.

A date for the hearing in the Supreme Court has been set for 13 January 2015.

8. Legal implications

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

9. Staffing implications

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

10. Business plan implications

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

11. Ward member comments

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

12. Reason for decision

12.1 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.

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Agenda Item 8

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