



CITY OF WESTMINSTER

# MINUTES

## Licensing Committee

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Committee** Committee held on **Wednesday 29th November, 2017**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

**Members Present:** Councillors Angela Harvey (Chairman), Heather Acton, Melvyn Caplan, Jean Paul Floru, Peter Freeman, Murad Gassanly, Louise Hyams, Karen Scarborough, Shamim Talukder and Aziz Toki

**Apologies for Absence:** Councillor Julia Alexander, Councillor Rita Begum, Councillor Susie Burbridge, Councillor Tim Mitchell and Councillor Jan Prendergast

#### 1 DECLARATIONS OF INTEREST

1.1 There were no declarations of interest.

#### 2 MINUTES AND MATTERS ARISING

2.1 The Chairman expressed concerns that eight councillors had signed up for the Licensing and Planning training session on the evening of Monday 27 November and that whilst one apology for absence had been received, only two Members (herself and Councillor Cox) had attended. She emphasised the importance of Member training and that three senior officers had been present to provide the training.

2.2 In respect of paragraph 6.6 of the minutes, the Committee requested an update from the Task and Finish Group which it had been stated would develop the Council's vision and plan for the evening and night time economy. This would be forwarded to the Committee prior to the next meeting.

2.3 In respect of paragraph 8 of the minutes, the Committee requested a verbal update on the Notting Hill Carnival. David Sycamore, Licensing Team Manager, advised that there had been a slight reduction in the number of street traders for the Notting Hill Carnival which had been of benefit in those areas where there had been congestion issues due to the large number of people. The Licensing Service had taken on some actions to look at the locations of street trading pitches for next year's event to further assist with the flow of people. Meetings had been held with the Royal Borough of

Kensington and Chelsea officers regarding further improving partnership working. It was believed that there had been no major issues arising from the Carnival in 2017 in the Westminster area and that there had been a slight reduction in the number of incidents the Police had attended. It was understood that there had also been a reduction in the number of noise complaints received in relation to this year's event. It was felt that Carnival had been policed appropriately and resourced appropriately by the Council.

- 2.4 Mr Sycamore was asked by the Chairman whether there were any licences which were granted for on street trading which contributed to problems during the Carnival. Mr Sycamore replied that officers had taken feedback from City Inspectors who were at the event and were examining some of the locations for traders who were granted temporary event notices ('TENs') and others which were already licensed. It had been found that meeting with the traders this year was useful and potentially if officers were able to engage with them at an earlier stage there could be an overall benefit in terms of where they would be located.
- 2.5 Mr Sycamore was asked by Councillor Caplan whether there was now a greater understanding of the process regarding TENs as there had previously been a misunderstanding amongst officers that it was not possible to modify the TENs at hearings, including those relating to the Carnival. He replied that this had been taken on board and additional training had been provided for officers. The greater knowledge would be reflected in the initial communications between officers and the Premises Users.
- 2.6 Councillor Scarborough asked whether the Council had paid more money in terms of its efforts on behalf of the Carnival. Annette Acik, Head of Licensing, replied that the Council had paid roughly the same amount towards the Carnival as in 2016. Additional staff were not employed specifically for the event. There was a prioritisation for existing staff to be present at the event.
- 2.7 **RESOLVED:** (i) That the minutes of the Licensing Committee meeting held on Wednesday 5 July 2017 be signed by the Chairman as a correct record of proceedings; and,
- (ii) That an update on the Task and Finish Group be forwarded to the Committee prior to the next meeting.

### **3 LICENSING SERVICE FEE REVIEW (EXCLUDING STREET TRADING REGIMES) JANUARY - JULY 2018**

- 3.1 The Committee considered a report which set out the proposed fees for the licensing regimes where the Council has the power to set them. Kerry Simpkin, Licensing Service Consultation Team Manager, advised the Committee that there was minimal adjustment to the fees in comparison to the previous year's. The fees would enable the Council to recover its costs in managing and administering the licensing regimes. It was being requested that the fees set out in Appendix 1 of the report were approved by the Committee up until July 2018 when there would be a further review to be in

keeping with the corporate timeframe for fees and charges. The report for the next fee review would be brought before the Committee in July 2018.

- 3.2 Councillor Gassanly expressed some concerns about charges for special treatment premises, including in comparison to other London local authorities. The Chairman also queried whether it was reasonable to charge the smaller special treatments premises exactly the same as the larger businesses when it may have considerably less facilities, such as beds. Mr Simpkin, in response, advised that it was the case that Westminster is the local authority which charges the highest fees for special treatment premises in London. This was in order to recover costs and work relating to enforcement compliance and applications. The Licensing Service was investigating a different approach to charging smaller special treatments premises and larger special treatment premises. The Licensing Service would be able to propose some options for the Committee at a future meeting. It was agreed that the options would be provided to the next meeting of the Committee in March 2018 ahead of the next review in July.
- 3.3 Councillor Acton requested clarification as to why there was no income set out under the zoo licensing regime. Mr Simpkin responded that this was due to zoo licences being over a period of six years. Fees had been increased for the January to July 2018 period for the zoo licensing regime in order to recover costs. However, there was no expected income due for a number of years because of the six year cycle.
- 3.4 **RESOLVED:** (i) That the proposed fees in Appendix 1 of the report be approved commencing 1 January 2018; and,
- (ii) That a report be brought to the next meeting of the Committee in March 2018 with options for differential charging of small and large special treatment premises.

#### **4 DCMS CONSULTATION ON PROPOSALS FOR CHANGES TO GAMING MACHINES AND SOCIAL RESPONSIBILITY MEASURES UNDER THE GAMBLING ACT 2005**

- 4.1 The Committee received a report summarising the Department for Digital, Culture, Media and Sport's ('DCMS') Consultation on proposals for changes to gaming machines and social responsibility measures under the Gambling Act 2005. Mr Simpkin, introducing the item, stated that the headline in the Consultation was the proposal to reduce the maximum stake for B2 gaming machines (Fixed Odds Betting Terminals) from £100 down to a figure between £2 and £50. The Licensing Service would be formulating a draft response to DCMS' Consultation that would be forwarded to the Deputy Leader and Cabinet Member for Business, Culture and Heritage. Views from the Committee were welcomed until 5 January 2018 prior to the submission of the draft response to the Cabinet Member. The Council's final response would be sent to DCMS before the 23 January 2018 deadline.

- 4.2 Mr Simpkin advised that aside from the headline item relating to the B2 gaming machines, there were a number of other important matters referred to in the Consultation particularly in terms of the Licensing Service's work to protect the vulnerable. He explained that B3 gaming machines in bookmakers were also shown to have a significant impact on the vulnerable. Whilst DCMS were not proposing to specifically change how the B3 machines operated, (the stake was currently £2) there was an impact which was set out in their documentation. Mr Simpkin said that this needed to be included in the Council's response, pointing to the Licensing Service's work on vulnerability to gambling addiction locally.
- 4.3 Mr Simpkin also drew the Committee's attention to other matters set out in the report relating to the Consultation including converted casinos and also social responsibility measures, such as the advertising of online gambling.
- 4.4 Members of the Committee were keen to explore how the vulnerable in terms of gambling addiction could be better protected. The Chairman and Councillor Hyams noted that the Association of British Bookmakers' code on social responsibility had introduced voluntary measures that players could select to limit their spend and the time they play the B2 gaming machines. However, only 0.5% of machine sessions in the first month after its implementation included a voluntary time and money limit. It was felt that this area could be strengthened as could technology in order to identify problem gamblers. The Chairman recommended that contactless debit or credit cards were not permitted for gaming use as research had shown that it did not have the same effect as passing over coins or notes. Mr Simpkin advised that it was not currently possible to use a debit or credit card for a gaming machine. The Government continued to support this position. The industry was proposing the potential use of debit and credit cards. Mr Simpkin also stated that the Licensing Service had previously looked at the ability to track data on gaming machines in order to check whether those using the machines were reaching a limit in terms of what they could afford. At the moment those using gaming machines were anonymous, in contrast to online gaming where users had accounts. He added that this could be included in the response to the DCMS consultation.
- 4.5 Mr Simpkin said that Westminster was leading the way on protecting the vulnerable from gambling addiction and he expected the response to the DCMS to be quite detailed, taking into account the work undertaken and that it was known where the localised areas of problem gambling are. There would also be a significant refresh in 2018 of Westminster's licensing policy associated with gambling to reflect the work undertaken. There had been success on the part of the Council in respect of major licensing applications for betting shops where a more stringent approach had been taken due to higher levels of vulnerability to gambling addiction in localised areas of the borough. The Committee supported the inclusion of the more detailed work in the Consultation response. Councillor Scarborough referred to the issues with clustering of betting shops in Edgware Road and the Chairman referred to the research which had taken place in South Westminster.

- 4.6 Members, including Councillors Gassanly, Caplan and Freeman, requested that whilst the vulnerable needed to be protected, it should also be reflected in the response to the Consultation that their constituents live in a free society where gambling is permitted, including the national lottery. It also needed to be recognised that the majority of gambling was online which is not regulated by the Licensing Authority. Mr Simpkin made the point that the Council was seen positively by the gambling industry. It took an evidence based approach and was only more stringent if there was seen to be a real risk to the vulnerable.
- 4.7 The Committee strongly supported that the maximum stake for B2 gaming machines should be £2 in order to protect the vulnerable.
- 4.8 **RESOLVED:** That the views of the Committee at the meeting and any further views from Members of the Committee made prior to 5 January 2018 be taken into account in the Council's formal response to the DCMS Consultation.

## 5 LICENSING CHARTER UPDATE

- 5.1 The Committee received a report setting out progress on delivering the City for All Year 2 commitment to introduce a voluntary standard, now named Westminster's Licensing Charter. Mr Sycamore advised that the vision was to support the entertainment industry to sign up voluntarily to the Licensing Charter. The Charter focused on recognising achievement in well run premises and that the premises' protection of the vulnerable from harm (including from the impact of alcohol) was a key element, supporting the licensing objective. The intention was to reduce anti-social behaviour, crime and poor health issues. Mr Sycamore said that it was hoped that the resulting improvement would lead to the responsible growth of the evening and night time economy which was sought by businesses and a closer working relationship with the industry, the Police and other stakeholders on a Charter steering group. He informed Members that it had been useful to have talked to businesses already informally at meetings about the Licensing Charter.
- 5.2 Mr Sycamore referred to the Charter being piloted in the Heart of London Business Alliance ('HOLBA') Business Improvement District area. The plan was to have 15 members of HOLBA sign up to the Best Bar None scheme. This was a national accreditation scheme which required premises to reach minimum standards in promoting responsible management and operation of alcohol licensed premises. In response to questions from the Sub-Committee, Mr Sycamore stated that the application process for the Best Bar None scheme would commence in the New Year and the promotion of the scheme was currently taking place. The launch had taken place on 30 October and was held in Tiger Tiger in Haymarket. This had been attended by the Leader of the Council. A 'Super Pub Watch' event had also recently been held at Café de Paris in Coventry Street where officers had met with industry leaders. There would be a social media and poster campaign to promote the Licensing Charter in January 2018.
- 5.3 Councillor Talukder asked whether councillors would be able to attend future Licensing Charter events, including Members of the Licensing Committee. Mr

Sycamore replied that a number of Members had attended the launch of the Best Bar None scheme. He gave a commitment that licensing officers would review circulation lists for invitations to the Licensing Charter events, including to take into account Members of the Licensing Committee.

- 5.4 **RESOLVED:** That the circulation lists for invitations to the Licensing Charter events be reviewed, including to take into account Members of the Licensing Committee.

## **6 THE GOVERNMENT RESPONSE TO THE REPORT FROM THE HOUSE OF LORDS SELECT COMMITTEE ON THE LICENSING ACT 2003**

- 6.1 The Committee received a report which summarised the recommendations made by the House of Lords Select Committee on the Licensing Act 2003 published on 4 April 2017 and the Government's response to the recommendations published on 6 November 2017. Ms Acik provided the additional information that the Select Committee had accepted submissions, including from the Council. It had heard from witnesses, including Richard Brown, Solicitor at the Citizens Advice Bureau Licensing Advice Project.
- 6.2 The Committee noted that the Government had not supported the recommendation of the Select Committee to enact the provision for permitting locally set fees. Ms Acik drew Members' attention to some points in the recommendations of the Select Committee and the Government response that could potentially be taken forward at Westminster. The Government response to the Select Committee accepted the point that planning and licensing could work better together and coordination was encouraged where appropriate (there was not support from the Government or from the Council for the recommendation of the Select Committee for the transfer of functions of Licensing Committees to Planning Committees). Ms Acik advised that further thought could be given to licensing and planning officers engaging more than was the case currently. The Select Committee had recommended that there was a minimum level of training for councillors before they are permitted to sit on a Licensing Committee or Licensing Sub-Committee. Ms Acik commented that there was a good standard of licensing training for Members at Westminster. Members' views were welcomed however as to whether this could be improved, including whether the training could be provided differently. There was a recommendation relating to the Late Night Levy. Ms Acik stated that the Government's response referred to local initiatives and the Licensing Charter was an example of the Council's local initiatives. Finally, the Select Committee had recommended that licensing authorities should publicise the reasons which had led them to settle an appeal and should hesitate to compromise if they are effectively reversing an earlier decision which residents and others intervening may have thought they could rely on. Ms Acik said that this was a matter to be discussed with Legal as ideally the process could be made more transparent.
- 6.3 Heidi Titcombe, Principal Solicitor for Shared Legal Services was asked to give advice on the issues relating to settlement of appeals. She explained that in the event the applicant decided to appeal a Licensing Sub-Committee

decision, the appeal would take the form of a re-hearing. At the appeal hearing, new evidence would be produced. Those who may have made representations to the Sub-Committee originally, including residents, may decide not to take part in the appeal process. The appellant would endeavour to resolve any issues at the premises prior to an appeal hearing. A Court would need to determine the appeal, based on the position at the time of appeal, including taking into account any change of circumstances and any new measures proposed by the appellant in terms of practices and additional conditions they are proposing to add to the licence, if the Court is minded to allow the appeal. The appellant's legal representatives often attempt to achieve a compromise in respect of the appeal in order to avoid a full hearing. The licensing authority is required to consider any compromise very carefully. The House of Lords Select Committee had concerns that discussions between the parties tended to take place in private so the parties to the original committee hearing would not necessarily be involved. Different authorities have different practices in terms of settling cases, decisions to settle can be made by officers. However, in Westminster if it is proposed to settle a case, the decision is made by the Licensing Sub-Committee, who receive a report from officers. This determination is in private but depending on the case, if a lot of residents are involved and in appropriate cases, meetings can be held with residents to explain the reasons why a compromise is recommended. The licensing authority's legal representative does liaise with any residents who had made representations to the Sub-Committee during the appeal process.

- 6.4 Ms Titcombe stated that it is important to explain to any parties opposing the appeal, why a compromise is being considered. However, these discussions generally have to take place in private so that it does not undermine the Licensing Authority's defence of the appeal. In appropriate cases, it is a good idea, to have a meeting with local residents to go through the evidence being produced at that stage and the reasons why a compromise should be achieved. She referred to the Council's success in managing appeals, including the settlement of appeals.
- 6.5 The Committee agreed that the Select Committee's recommendations had not recognised the good practices and trained Committee Members which applies to larger local authorities. It had not been taken into account when the Select Committee had recommended a transfer of functions of Licensing Committees to Planning Committees. Councillor Caplan asked officers to consider whether it was possible for Members of the Sub-Committee to be better informed at an earlier stage when an appeal has been submitted, when a decision had been made by the Court or when it had been settled.
- 6.6 **RESOLVED:** That the contents of the report be noted.

## **7 GIG AND SHARING ECONOMY: LICENSING IMPLICATIONS ASSOCIATED WITH DELIVERIES**

- 7.1 The item was introduced by Ms Acik. She stated that the report had been produced with the assistance of Policy officers. It was a response to the

concerns regarding the impact on local residents from food and drink delivery services which was discussed at the meeting of the Committee in July 2017.

- 7.2 Ms Acik referred to the impact on the community of a restaurant in Westbourne Grove. Significant action had been taken by the Council since the previous meeting of the Committee. It had required considerable staff resources, with colleagues looking at the powers available from legislation such as the Anti-Social Behaviour, Crime and Policing Act 2014. Eventually planning powers had been used with the premises being served a Planning Contravention Notice. Ms Acik made the point that there were limitations in terms of the action which could be taken from a licensing point of view. The report asked whether the Council should be considering a voluntary Licensing Charter type approach to encourage licensed premises to become more responsible when deliveries take place from their buildings.
- 7.3 Councillor Floru wished to provide clarification in relation to paragraph 4.11 of the report. He and Councillor Acton were agreed that they had no objection to motorised vehicles being used provided they were environmentally friendly and less noisy vehicles, such as electric vehicles. Other options included bicycles or deliveries on foot which created less emissions and noise nuisance. Councillor Floru and Councillor Acton had noted, when seeking to add conditions to the premises licence for applicants to use environmentally friendly and less noise intrusive delivery methods, that applicants had said to them at Licensing Sub-Committee meetings that they were not in a great bargaining position to demand this from the delivery companies. This was because the delivery companies are in many cases not directly employed by the applicants. Councillor Acton had suggested, and Councillor Floru had agreed with the view, that all businesses in Westminster should be asked to use environmentally friendly and less noise intrusive delivery methods. Ms Acik responded that any action from a licensing point of view would have to focus on the licensing objectives and the prevention of public nuisance rather than focussing on whether the delivery companies' methods were environmentally friendly or not.
- 7.4 The Committee appreciated that there were limitations to what could be done purely from a licensing point of view as set out in the report. It was necessary, as stated by Councillors Caplan and Freeman, to act within the powers permitted and to recognise, as stated by Councillors Gassanly and Talukder, that many of the delivery companies do not directly employ staff and that there was a benefit to those working on behalf of the delivery companies to carry out more deliveries via motorbike. The Committee asked officers to bring a report to the next meeting which would investigate the potential for a cross departmental Council wide approach, in order to protect residential amenity.
- 7.5 **RESOLVED:** That a report be brought to the next meeting of the Committee which would investigate the potential for a cross departmental Council wide approach in respect of deliveries, in order to protect residential amenity.

## **8 LICENSING POLICY REPRESENTATION AND CHANGES TO REPORTS**

- 8.1 The item was introduced by Mr Sycamore. He explained the operational change where senior licensing officers were representing the Licensing Authority on policy matters for applications within the Council's cumulative impact areas. This enabled Environmental Health officers to focus on the licensing objectives of public safety and preventing public nuisance when examining licensing applications that have been submitted. The Licensing Service was able to ensure at an early stage that applicants focussed on the Council's policy and met the requirements of the policy. Mr Sycamore advised that there were a number of cases where, because the Licensing Service was able to discuss policy considerations with the applicants at an early stage, there were amendments to an application. There had also been a number of applications withdrawn. Mr Sycamore stated that the discussions between the Licensing Authority and Applicant assisted in limiting the aspects of the applications which the Sub-Committee needed to consider at the hearing and resulted in the Licensing Sub-Committee reports being more specific.
- 8.2 In response to a question from the Chairman, Mr Sycamore commented that he had benefitted in terms of gaining skills from being involved in the licensing consultation process and following his promotion to Licensing Team Manager, his colleagues were also looking forward to being involved. Councillor Caplan said that the Licensing Authority's role had worked well and recommended that one improvement would be if the Licensing Authority and Environmental Health gave some more thought to being slightly more distinctive and less repetitive in terms of their representations at the Sub-Committee meetings. The Chairman thanked Mr Sycamore for his work on behalf of the Licensing Authority.
- 8.3 Councillor Hyams asked about the provision of pre-application advice and whether the Licensing Authority charged a fee for its policy advice. Mr Sycamore replied that pre-application advice was supplied by the Environmental Health Consultation Team. Policy considerations by the Licensing Authority took place following the submission of the applications. There was no fee charged by the Licensing Authority as the policy discussions were related to its statutory duties as a Responsible Authority. The Chairman made the point that what was achieved with the policy advice was greater efficiencies.
- 8.4 The Committee noted the changes to the Sub-Committee reports. Members of the Sub-Committee and interested parties for applications had access to names, addresses and plans whilst the publicly published versions had the name and address of the objector or supporter for an application redacted. Those who were not interested parties could inspect plans at Council offices. There was also mention in the report of the Council's obligations to have regard to its public sector equality duty under Section 149 of the Equality Act 2010. This would now be set out in all Licensing Sub-Committee reports.
- 8.5 The Chairman asked whether a service to prepare notices of licensing applications for advertising in newspapers could be supplied by the Licensing Service. She queried whether this could be produced at a reduced cost in comparison to that of the applicants' lawyers and provide a better service to

the applicants. Mr Simpkin replied that it was possible for the Licensing Service to provide this service as a means of recovering its costs. The Licensing Service was planning in the New Year to look at options to expand the services it was offering, including educating applicants about the Council's expectations and assisting applicants with submissions. Ms Acik added that the Licensing Service was considering what could be offered in terms of discretionary services and different levels of service. The preparation of notices would be part of this process.

8.6 It was agreed that the Committee would be updated on the additional services the Licensing Service would be looking to provide. This was likely to be in a report to the Committee meeting in July 2018.

8.7 **RESOLVED:** That the Committee be updated in a report on the additional services the Licensing Service plans to provide.

## 9 LICENSING APPEALS

9.1 Heidi Titcombe, Principal Solicitor for Shared Legal Services, provided an update on licensing appeals since the previous meeting of the Committee in July 2017. She confirmed at the meeting that the appeals in respect of Sophisticats, 3-7 Brewer Street had been dismissed by the District Judge. Also, the Appellants had withdrawn their respective appeals for Crocker's Folly, 24 Aberdeen Place and London Film Museum, 45 Wellington Street prior to the appeal hearings taking place. In the case of Sophisticats and Crocker's Folly, the Appellants had been ordered to pay costs to the Council and the Council was endeavouring to recover these. In the case of London Film Museum, the Council was seeking to recover its legal costs as the appeal had only very recently been withdrawn. There was one remaining appeal for Swingers, 15 John Prince's Street which recently had been received. No date had yet been set for the appeal hearing.

9.2 In response to a question from Councillor Caplan in respect of the Hemming case, Ms Titcombe clarified that the Council had been required by an order of the Court of Appeal to refund a number of years' licence fees to the operators within a specific timeframe even though the Council was due to appeal and subsequently did appeal to the Supreme Court. The Supreme Court decided decisively in favour of the Council that it could recover a reasonable fee for the monitoring and enforcement of the sex licensing regime in Westminster. The Council would now be seeking recovery of all sums repaid, in addition to a reasonable sum for the monitoring and enforcement of the licensing regime for the years ending 2011, 2012 and 2013 as swiftly as possible.

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

## 10 ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

- 10.1 The Chairman informed those present, as requested by Councillor Acton that an event was being held the following day where the Council was giving regulatory advice and health information to any business offering shisha.
- 10.2 The Chairman advised that evidence was being submitted to the London Night Time Commission on the merits of an evening and night time economy, distinguishing it from the limitations of being referred to as a night time economy. If Members of the Committee had any evidence they would like to submit on this point they should forward it to the Chairman in the next few days in her capacity as a member of the London Night Time Commission.

**11 FUTURE LICENSING COMMITTEE MEETING DATES**

- 11.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 21 March 2018, Wednesday 4 July 2018 and Wednesday 28 November 2018. All meetings are scheduled for 10.00am.

The Meeting ended at 11.48 am

**CHAIRMAN:** \_\_\_\_\_

**DATE** \_\_\_\_\_