



City of Westminster

Committee Agenda

Title: **Licensing Committee**

Meeting Date: **Wednesday 29th November, 2017**

Time: **10.00 am**

Venue: **Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR**

Members: **Councillors:**

Angela Harvey (Chairman)	Murad Gassanly
Heather Acton	Louise Hyams
Julia Alexander	Tim Mitchell
Rita Begum	Jan Prendergast
Susie Burbridge	Karen Scarborough
Melvyn Caplan	Shamim Talukder
Jean Paul Floru	Aziz Toki
Peter Freeman	

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

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**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 Director of Law 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 sign the minutes of the meeting held on Wednesday 5 July 2017.

(Pages 1 - 12)

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

Report of the Director of Public Protection and Licensing.

(Pages 13 - 20)

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

Report of the Director of Public Protection and Licensing.

(Pages 21 - 32)

5. LICENSING CHARTER UPDATE

Report of the Director of Public Protection and Licensing.

(Pages 33 - 40)

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

Report of the Director of Public Protection and Licensing.

(Pages 41 - 52)

7. GIG AND SHARING ECONOMY: LICENSING IMPLICATIONS ASSOCIATED WITH DELIVERIES

Report of the Director of Public Protection.

(Pages 53 - 56)

8. LICENSING POLICY REPRESENTATION AND CHANGES TO REPORTS

(Pages 57 - 60)

Report of the Director of Public Protection and Licensing.

9. LICENSING APPEALS

Report of the Director of Law.

**10. ANY OTHER BUSINESS WHICH THE CHAIRMAN
CONSIDERS URGENT**

11. FUTURE LICENSING COMMITTEE MEETING DATES

21 March 2018, 4 July 2018 and 28 November 2018

(Pages 61 - 66)

**Charlie Parker
Chief Executive
24 November 2017**

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CITY OF WESTMINSTER

MINUTES

Licensing Committee

MINUTES OF PROCEEDINGS

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

Members Present: Councillors Angela Harvey (Chairman), Heather Acton, Julia Alexander, Susie Burbridge, Melvyn Caplan, Jean-Paul Floru, Peter Freeman, Murad Gassanly, Louise Hyams, Tim Mitchell, Jan Prendergast, Karen Scarborough and Shamim Talukder

Apologies for Absence: Councillors Rita Begum and Aziz Toki

1 DECLARATIONS OF INTEREST

1.1 There were no declarations of interest.

2 MINUTES

2.1 **RESOLVED:** That the minutes of the Licensing Committee meeting held on Wednesday 22 March 2017 be signed by the Chairman as a correct record of proceedings.

3 DEVELOPING AN APPROACH TO TACKLE THE GROWING IMPACT ON LOCAL RESIDENTS FROM FOOD AND DRINK DELIVERY SERVICES

3.1 The report was introduced by Kerry Simpkin, Licensing Team Manager. He referred to the growing 'gig' economy in London and elsewhere in the country. One of the issues which had arisen in more recent times, particularly in Westminster, related to the delivery of food and drink from restaurant or takeaway premises. The impact which resulted from this included public nuisance, anti-social behaviour, litter being discarded and parking offences and general poor behaviour on the part of delivery drivers. The Licensing Service had been looking at identifying and addressing some of the issues which were associated with this growing market.

3.2 Mr Simpkin explained that whilst the Licensing Service had a role to play in this process there were limitations to what could be requested of licence

holders under the terms of the Licensing Act 2003. For instance the sale of hot food and hot drink (late night refreshment) was only licensable between 23:00 and 05:00 hours. It was also the case that a lot of deliveries were carried out by unlicensed operators. There was greater scope for controls over the activities of licence holders in respect of the delivery of off sales as the hours for off sales were not restricted in the same way as late night refreshment.

- 3.3 Mr Simpkin referred to the proposed stepped approach by the Licensing Service and other Council departments. These included looking at the locations where the issues were most severe and the extent of these issues. Once the evidence was obtained, there would then be engagement with the operators offering deliveries and in the event they used third party delivery companies there would also be discussions with them. The aim was that agreement would be reached as to how these operations should proceed in the borough. This could involve small changes in operation such as relocating staging areas for riders/drivers away from residential areas. The Licensing Service was working with local residential problem solvers and the Council's Planning department who were looking at planning uses.
- 3.4 Mr Simpkin added that the Licensing Service was investigating how best to address the environmental factors raised by the delivery vehicles including noise and emissions and to encourage a movement towards low emission vehicles.
- 3.5 The views of the Committee were sought. The Chairman referred to the signs of success of the new anti-idling action campaign which drivers had begun to comply with. She also made the point that the younger demographic had often expressed interest in environmental issues. This she believed was an opportunity for the delivery companies' apps or websites to provide greener options where deliveries would be by bicycle, foot or electric vehicles rather than by mopeds and motorbikes. Some delivery companies were setting up kitchens in industrial areas. This could potentially reduce the amount of mileage that the third party delivery companies were travelling, and engagement with such companies should start.
- 3.6 Councillor Floru raised the issue of the operators saying at Sub-Committee hearings that they could not adhere to Members' or residents' requests about using bicycles or electric vehicles for deliveries because they had no control over the third party delivery companies. He expressed the view that there needed to be a pan-Westminster approach. Councillor Scarborough commented that the problem was not simply noise but also delivery motorbikes in residents' parking bays and also whilst deliveries of food and drink was part of the problem, there were plenty of other companies who were delivering items at times which caused nuisance to residents. Councillor Prendergast raised the point that the deliveries caused irritation to residents because the drivers/riders did not always know the location destination and rang doorbells, waking up people in flats. Councillor Mitchell recommended that discussions took place with landlords who could influence tenants that were operating licensed premises and signing up to providing deliveries.

- 3.7 Members had some concerns about the feasibility of the proposed stepped approach. Councillor Burbridge stated that there had been similar discussions with delivery services in her ward (Lancaster Gate) and the approach was not working. She believed that it was known what the problems were such as the number of motorbikes on the road, the noise they make and the litter which is discarded and also where the problems were particularly acute. She recommended encouraging operators to run their own delivery businesses and have a greater interest in respecting the needs of the community rather than depending on third party delivery companies. Councillor Acton was of the view that planning options needed to be investigated more thoroughly. She took the view that it was not sufficient to look only at where the problems were most severe because they were not restricted to where the delivery vehicles congregated or set off from but the journeys that the noisy motorbikes were taking, such as down backstreet mews. She referred to officers having previously talked to third party delivery companies and that the companies were not changing their style of operation. Councillor Acton concurred with the Chairman that the users of the service were made aware of the adverse impact it was having, including on the environment.
- 3.8 Councillor Caplan believed it was unfair and opportunistic for such restrictions to be placed purely on companies who were applying for new premises licences. There were many companies who were providing deliveries who were not affected as they were not applying for the licences. He believed it was known where the areas were acute and that it is a city wide issue. He did not believe the stepped approach would work. He believed more could be achieved via the planning regime than the licensing one. The Council had to be clearer what it wanted to achieve on this issue, including whether it supported legislation. It needed to be made easy for the public to do the right thing if they were to choose 'greener' delivery methods.
- 3.9 Councillor Gassanly spoke about the need to better understand the delivery industry. He had had discussions with third party Deliveroo cyclists. They had informed him that they planned to buy motorbikes in order to be able to carry out more deliveries as they earned more money on the basis of the number of deliveries made as self-employed individuals.
- 3.10 The Chairman and Councillor Acton emphasised the need for the Council's Communications Team to develop a strategy which could reflect the adverse impact of environmental pollution and mental health from the increased use of vehicles on the road and also that the use of motorcycles risked the safety of inexperienced delivery riders. There had been two deaths of Deliveroo motorcycle riders. This was related to how the company structured the rewards. Councillor Scarborough said that she was agreeable to the idea of lobbying for legislation but that it was important that as a result of the communications strategy the Council was not presented as being anti-business. The Chairman was keen to emphasise that the Council, the operators and the third party delivery companies encouraged good business practices.

- 3.11 Barry Panto, Senior Assistant Solicitor, advised that if firms were undermining the licensing objectives when delivering alcohol or hot food or hot drink by for instance causing public nuisance, there was the option to review the premises licence. There was then the potential for appropriate conditions to be attached to the licence or for the hours of the delivery to be restricted. Any such review was likely to be noted by similar companies.
- 3.12 Annette Acik, Head of Licensing, stated that officers were very mindful of the fact that there were colleagues in other service areas who deal more with anti-social behaviour or public nuisance issues and the Licensing Service were linking up with them. This would enable them to identify the problematic premises and obtain the evidence which could be used for a review of a premises licence. It would take time to do down any legislative route. It was a developing picture and officers needed to be managed in the best way possible.
- 3.13 The Chairman requested that the Licensing Service further investigate all the policy strands available in responding to the issues raised by deliveries of off-sales and hot food and hot drink. She added that there needed to be a communications strategy in place and also discussions take place with operators and the third party delivery companies to encourage good healthy business practices rather than continuing to pursue an approach which impacts adversely on health.
- 3.14 **RESOLVED:** (i) That the Licensing Service further investigate all the policy strands available in responding to the issues raised by food and drink delivery services and, in consultation with the Chairman, bring a paper with recommendations to the next meeting of the Licensing Committee; and,
- (ii) That a communications strategy on the issue of food and drink delivery services be developed by the Communications Team, in consultation with the Chairman and the Licensing Service.

4 BUSINESS INFORMATION & LICENSING SERVICE PERFORMANCE REVIEW 2017

- 4.1 Steve Rowe, Senior Licensing Practitioner, addressed the Committee on this item. He advised that Key Performance Indicators had been developed to ensure efficient progress of all applications, effective case management and the provision of a high quality service. This was reflected in the digital transformation of the Licensing Service. An online form had been created for applicants to fill in which would populate data into the Licensing Service's Uniform system. This reduced the amount of time that officers would otherwise be using for data input. It enabled them to focus more on managing the interaction between applicants, residents and responsible authorities at the initial stages of the application process. They could then determine which applications were likely to proceed to a Licensing Sub-Committee hearing.
- 4.2 Mr Rowe commented that Members of the Committee would be aware that the Licensing Service was now making representations to applications as the

Licensing Authority. Officers had found that on a number of occasions applicants were amending applications at the initial stage following discussions with officers and these applications were often resolved prior to proceeding to the Licensing Sub-Committee. In some cases applications had been withdrawn when it had been pointed out by officers to the applicants that they were contrary to policy.

- 4.3 Mr Rowe referred to the statistics set out in the briefing note that the Licensing Service receives over 6000 applications a year, of which approximately 160 applications require determination at Licensing Sub-Committee hearings. He believed there was the potential for the continued reduction in the number of applications proceeding to the hearings due to the proactive approach by officers at the initial stage.
- 4.4 The Sub-Committee was also advised by Mr Rowe of the effectiveness of the performance dashboard which would monitor and report on performance and key information that would enable the Licensing Service to better understand trends. It would be possible to assess for instance how the Evening and Late Night Economy was operating in terms of how many applications for restaurants or bars were being received or where officers could best be allocated applications so that the Licensing Service did not miss performance targets.
- 4.5 The Chairman welcomed the fact that the technology enabled the Licensing Service to be more efficient with the resources available. She welcomed the ability to better understand trends such as applications where food and drink delivery services were sought. Members of the Committee congratulated officers in the Licensing Team on the work set out in the briefing note.
- 4.6 Councillor Floru asked for clarification in respect of the briefing note which referred to an increased number of licensing applications received each month but that the number of licences issued each month had remained reasonably steady. Mr Rowe replied that the applications received also took into account temporary event notices. No licences were issued for temporary event notices. Councillor Burbridge asked for further details on the Licensing Service's role in making representations to applications as the Licensing Authority. Mr Simpkin provided the information that the Licensing Authority is a Responsible Authority and officers had taken on this role in terms of assessing applications in line with the Council's policy. This function had previously been mainly carried out by Environmental Health but they were now focussing purely on whether applications met the licensing objectives of public safety and preventing public nuisance.
- 4.7 **RESOLVED:** That the contents of the briefing note be noted.

5 LICENSING ACT 2003 – MODEL CONDITIONS

- 5.1 The Committee received a report which advised of the intention to review the Council's model conditions. The model conditions are proposed for applications under the Licensing Act 2003 by applicants and other parties.

Chris Wroe, Licensing Strategy and Policy Manager, introduced the report. He stated that it had been almost two years since the model conditions had been published. They were available on the Council's website. There was an ongoing process where he discussed individual conditions with the likes of Mr Panto, Legal Adviser at Licensing Sub-Committee meetings and also Police and licensing and enforcement officers. He had written to many stakeholders regarding the review of the model conditions and intended to consult external solicitors. The aim was to publish the updated model conditions in the next couple of months or so.

- 5.2 The Chairman recommended that more information was provided on the model conditions to Westminster councillors who are not Members of the Licensing Committee. Councillor Mitchell made the point that there was the option for officers to provide some licensing training as part of the Member Development Programme to non- Licensing Committee Members in November/December 2017 which would include model conditions. It would be beneficial for all Members to understand how they could engage with the licensing processes. Members were often not aware for instance that they should not directly contact the Sub-Committee prior to the hearing or that they could not address the Sub-Committee at the hearing without submitting a timely representation or being requested to speak on behalf of a resident. Mr Wroe responded that he would be happy to provide some input into the proposed training.
- 5.3 Councillor Caplan requested that officers review a number of matters regarding the model conditions. He queried whether there needed to be as many model conditions in existence as was currently the case, including 15 model conditions relating to off-sales and 4 works conditions. He also asked that officers have a look at whether model conditions could cater for premises which did not constitute a bar but were equally not restaurants. He recommended that officers review the wording for takeaway food, deliveries and pavement cleansing conditions. He believed it would be beneficial to have a glossary of the most frequently used model conditions.
- 5.4 Councillor Floru said that he agreed with Councillor Caplan's comments, in particular the request that officers look at reducing the number of model conditions. He asked that officers consider removing the word 'comprehensive' from the CCTV Model Condition 01. He had concerns that this could mean cameras everywhere in and around the premises building and could therefore be excessive. Councillor Floru expressed the view that Model Condition 24 was useful in terms of a direct telephone number for the manager of the premises being available to residents and businesses. However, he believed there was added value in adding a sentence to the model condition that the telephone number 'shall be displayed near the main entrance to be visible from outside in letters not less than two inches tall'.
- 5.5 Councillor Alexander recommended an amendment to Model Condition 42 so that there was a requirement for the area immediately outside the premises to be cleaned 'effectively'. She made the point that she had seen filthy pavements which had been hosed but no detergent had been used.

- 5.6 Mr Wroe in response to the points that had been made stated that he would re-assess how best to index the model conditions. One option would be to list them in terms of subject. He would examine the model conditions to see if there were any that could be removed. The model conditions were designed to meet the needs of any of the parties to a hearing in as many circumstances as possible.
- 5.7 **RESOLVED:** (i) That officers be available to provide some licensing training as part of the Member Development Programme to non- Licensing Committee Members in November/December 2017 which would include model conditions;
- (ii) That the comments of the Committee be taken into account in the review of the model conditions; and,
- (iii) That the contents of the report be noted.

6 EVENING AND NIGHT TIME ECONOMY LICENSING CHARTER PAPER

- 6.1 The Chairman advised that she had attended a number of conferences recently with officers where they had looked to influence on the benefits of the Evening and Night Time Economy. She was due later that afternoon to give evidence with Richard Cressey, Principal Policy Officer, to the Greater London Authority's Economy Committee about the 'Night Time Economy'. She would be putting the case there that they should be referring to the 'Evening and Night Time Economy'.
- 6.2 Mr Cressey explained that the report set out the process for developing the Council's own vision and plan for the Evening and Night Time Economy. However, the subject matter was also important across London and elsewhere in the country. Westminster's approach was not limited to the licensing vision but also included economic development, regeneration and planning.
- 6.3 Mr Cressey referred to the feedback from the previous meeting of the Licensing Committee in March 2017 being that there was the potential for a full Council discussion on this topic (the next Council meeting after the one on 12 July was not until November). There had also been discussions regarding the Business Planning and Transport Policy and Scrutiny Committee and the Adults Health and Public Protection Policy and Scrutiny Committee holding a joint task group in the autumn to look at the evening and night time economy and aspects of the night tube. There would be a consultation process with councillors, including those who were not on the Licensing Committee and with those whose wards were most affected by the Evening and Night Time Economy. The Council would consult external stakeholders including businesses with premises licences and also from a retail background, office workers and local residents.
- 6.4 Mr Cressey commented that the Mayor had his views of what the Evening and Night Time Economy should look like across London. The Council had its own positive view of what this should look like in the West End and needed to

engage in the wider London debate. Westminster's Evening and Night Time Economy was the most mature in the country and the Council had a lot of experience of managing it. This could be shared with other London boroughs that had less experience of managing it and the Council was also able to learn from these other London boroughs. The Chairman added that the Night Tube was a particular catalyst for the Evening and Night Time Economy in other areas of London.

- 6.5 Councillor Mitchell recommended that Members contact Mr Cressey if they wished to be involved with the proposed process for developing the Council's vision as set out in the report. He added that the St James's Ward councillors would appreciate having a session where they were consulted on this topic and this was likely to also be the case for the West End Ward councillors. The Chairman stated that the open sessions for councillors to discuss ideas and thinking that she would be leading with Councillor Cox, Cabinet Member for Public Protection and Licensing was now scheduled for September 2017. This followed key officers being involved with the Grenfell Tower response.
- 6.6 Councillor Hyams informed those present that she had recently attended a meeting with representatives of the arts market and galleries and they were keen to make their art more accessible. She was keen on assisting cultural activities via the evening economy. Museums and galleries could potentially stay open later. The Chairman made the point that she wanted to encourage people to shop and aid the economy in the borough. Councillor Acton recommended that there was also a focus on the Edgware Road Evening and Night Time Economy as well as in the West End, including seeking to address the problems there, such as the issues raised by shisha. She also recommended that the Task and Finish Group which was responsible for developing the detailed thinking, strategy and policy proposals for the Council's vision include a representative from Public Health.
- 6.7 Councillor Floru requested that any proposals from the Task and Finish Group were also brought to the Licensing Committee at the next meeting on 29 November.
- 6.8 In response to Councillor Hyams' point about assisting cultural activities via the evening economy, Mr Cressey said it was necessary to understand what the current barriers were to the likes of the museums and galleries staying open later into the evening. One matter that could arise was if these organisations enquired as to the potential for selling alcohol in order to make staying open until later economically viable. There could potentially be a dialogue as to how this could be made viable to the organisations without it having an adverse impact on the city.
- 6.9 **RESOLVED:** (i) That the Task and Finish Group take into account the comments made by Members of the Licensing Committee; and,
- (ii) That the Committee notes the contents of the report.

7 LICENSING APPEALS

- 7.1 The Committee noted the current position in respect of licensing appeals which had been submitted in relation to decisions taken by the Licensing Sub-Committee. Heidi Titcombe, Principal Solicitor of the Planning, Highways and Licensing Team, Tri-Borough Shared Legal Services, provided an update on the appeal for Sophisticats, 3-7 Brewer Street, London, W1. It had taken place in the last week of June. However, the District Judge had decided to adjourn the case to allow further evidence to be submitted by both parties. Provided the parties produced the evidence in a timely fashion, a judgement could potentially be received in August.
- 7.2 Ms Titcombe confirmed that a judgement was still awaited from the Supreme Court in respect of the 'Hemming' Sex Establishment Licensing Fees case and Members would be updated at the next meeting.
- 7.3 Ms Titcombe also advised the Committee that an appeal had been received in response to the Sub-Committee's decision in April 2017 to refuse the application for Crocker's Folly, 24 Aberdeen Place, NW8. She added that fifteen local residents, two ward councillors and Environmental Health had objected to the application and the Council would be defending the decision robustly.
- 7.4 **RESOLVED:** That the contents of the report be noted.

8 NOTTING HILL CARNIVAL

- 8.1 The Committee was provided with a verbal update on the Notting Hill Carnival by Ms Acik. She advised that a new event management company for the Carnival had been in place for approximately five or six weeks. They were communicating with local residents, stakeholders, Westminster City Council and Royal Borough of Kensington and Chelsea Council ('RBKC').
- 8.2 Ms Acik explained that proposals for the Carnival included fewer smaller vehicles along the main Carnival route and an earlier start and finish for the event. Further clarity on the policing plans was likely to be received in the next few weeks. There were likely to be much more stringent controls on vehicles coming in and out of the Carnival and also hostile vehicle mitigation measures introduced. Westminster councillors would be provided with a briefing on the Carnival in the near future, including proposed changes and the licensing approach.
- 8.3 Ms Acik stated that there were current proposals regarding sound systems at the Carnival. RBKC had particular concerns about the links to crime and disorder issues and they were not permitting two of the several sound systems to be present during the event. Ms Acik informed Members that a report of a review had been published which had been jointly commissioned with MOPAC ('The Mayor's Office for Policing and Crime Police and Crime Committee'). This had engaged independent expertise and was focussed on crowd dynamics/movements. One of the areas which affected Westminster's footprint was around Westbourne Park Station. The report referred to the Sir

Lloyd sound system, which had a premises licence, and the issues relating to crowd congestion. It had been decided following discussions with the Police not to review the premises licence. Officers had communicated with Lloyd Roberts who was responsible for the sound system and it had been agreed that some of the risks could be mitigated by extending the barriers and creating a sterile corridor with greater access along Leamington Villas Road. This would reduce the congestion which had previously been caused with Sir Lloyd sound system at one end of the road and Channel One sound system at the other end. There would also be higher levels of security there. Similar plans were being proposed for the Channel One sound system.

- 8.4 Ms Acik drew Members' attention to the point that four temporary event notices for sound systems were expected to be received by Westminster City Council. The officers' approach would be that those submitting the TENs would be expected to put forward very robust event management plans.
- 8.5 Further information provided by Ms Acik included that expressions of interest had been sought earlier in the year for use of street trading pitches. There had been less interest than in previous years and the number of pitches had been reduced from 39 to 36. She added that it was helpful that the Police Superintendent involved with the Carnival was also involved with community engagement following the Grenfell Tower tragedy.
- 8.6 Councillor Burbridge expressed concerns that people attending the Carnival had been able to enter residents' gardens. She requested that tougher cardboard or a more effective barrier could be used to prevent this. Ms Acik offered to raise this with CityWest Homes.
- 8.7 Councillor Floru raised concerns about agitators, seeking to exploit the anger felt by the local community towards the Grenfell Tower tragedy, surfacing at the Carnival. Ms Acik referred to the comments of Pepe Francis MBE, the Chairman of the London Notting Hill Carnival Enterprises Trust who had recently commented that 'Notting Hill Carnival will show the local community's solidarity, support and respect for the victims of the appalling fire at Grenfell Tower. Grenfell Tower is at the heart of our neighbourhood. The survivors of the fire, our friends and neighbours, have suffered dreadfully. The families and loved ones of those who died and who are missing continue to suffer. This year, the blackened marker of Grenfell Tower casts a dark shadow over the joy and celebration of Carnival. We do not pretend to provide solace. But we can, and will, offer respect and solidarity. Carnival is a celebration of inclusivity, diversity and harmony. We will not provide a platform for those who espouse the politics of division and hate and who seek to create disharmony'.
- 8.8 **RESOLVED:** That the verbal update on the Notting Hill Carnival be noted.

9 ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

- 9.1 There were no additional items of business.

10 FUTURE LICENSING COMMITTEE MEETING DATES

10.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 29 November 2017 and Wednesday 21 March 2018. All meetings are scheduled for 10.00am.

11 CLOSE OF MEETING

11.1 The Meeting ended at 11.45am

CHAIRMAN: _____

DATE _____

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City of Westminster

Licensing Committee Report

Date:	Wednesday 29 th November 2017
Classification:	For General Release
Title:	Licensing Service Fee Review (excluding Street Trading regimes) January – July 2018
Report of:	Director of Public Protection and Licensing
Wards Affected:	All
Financial Summary:	This report sets out the fee strategy for the licensing regimes where the authority can set a fee to attempt to recover its own costs. The proposed fees will enable the authority to recover the majority of its costs in administering and ensuring compliance within those licensing regimes.
Report Author and Contact Details:	Mr Kerry Simpkin, Licensing Service Consultation Team Manager. Tel: 020 7641 1840

1. Executive Summary

- 1.1 The report sets out the proposed fees for those licensing regimes where the Council has the power to set its own fees. The proposed fees will enable the Council to recover its costs in managing and administering these licensing regimes for the remainder of this financial year to the next fee review which is planned to be considered in July 2018.

2. Recommendation

- 2.1 That the proposed fees attached to this report as Appendix 1 be approved commencing 1st January 2018.

3. Reasons for Decision

- 3.1 The proposed fees, attached to this report as Appendix 1 will enable to the Council to recover its reasonable costs in processing and determining applications and ensuring compliance with the appropriate legislation and the conditions of the licence.

4. Background

- 4.1 The current licence fees were agreed by the Committee on the 30th November 2016. Those fees came into effect on the 1st January 2017.
- 4.2 The Council has undertaken a review of the current fees and charges to which the Council, as Licensing Authority has the power to set.
- 4.3 The fees are estimated by assessing the time it takes for each step in the process from receipt of application to determination. This will include the time taken by internal consultees, such as the Environmental Health Consultation Team and Registrars.
- 4.4 The Council has also identified the estimated cost for the compliance and enforcement function carried out by the City Inspectors. The time has been assigned to different roles and the costs based on hourly rates. There is also a proportion attributed to these fees for management time which will include the costs associated with running the department and services involved with delivering a function associated with one or more licensing regimes. The fees have then been established by calculating the cost associated with each of the licensing functions.
- 4.5 Although the Council has not received any applications or issued any licences for some regimes it still must set a fee to recover the costs of carrying out that function. In the cases where the Council has not processed any applications or issued licences the costs have been estimated based on similar types of application process and licences.

5. Fee review

- 5.1 The fee has been established by calculating the time and the cost for undertaking that specific function. The model takes into account specific internal recharges and the costs associated with contract arrangements.
- 5.2 The fee review has concentrated on licensing regimes that the Council has the power to amend and set. However, the review has not considered any fees and charges associated with any Street Trading regime licensable under the City of Westminster Act 1999. A separate fee review is planned in the future relating to that specific regime and the fees and charges associated with those permissions.

6. Alignment to corporate approach to fee setting

- 6.1 Discussions have taken place between the Licensing Service and Finance about the future approach to carrying out fee reviews. The corporate approach to assessing and amending fees and charges requires all departments to review those charges following the end of the financial year. Any changes to fees and charges are then agreed via the appropriate decision maker in June and July each year.

- 6.2 The licensing fee review has been referred to the Licensing Committee in November of each year since 2014 with the fees coming into effect on the 1st January. This approach was adopted following the Hemming case to ratify a process of regular review and also to ensure sufficient time for the review of the services licensing fees.
- 6.3 It has been agreed that all future fee reviews will be aligned to the corporate approach and therefore the 2018/19 fees review will be brought before the Licensing Committee in July 2018 with a view to any changes in fees being implemented on the 1st August 2018.

7. Financial Implications

- 7.1 The proposed fees have been calculated on a full cost basis which considers both the direct and indirect costs associated with processing, monitoring and enforcing the licences.
- 7.2 When setting fees there is a statutory requirement to consider the income received for a licensing scheme compared to the overall cost of delivering the scheme. The fee level must be set to not generate income in excess of the cost associated with delivery.
- 7.3 The costs and charges for the Licensing Service have remained reasonably consistent from last year and as a result the majority of the proposed fee levels for this year are within 1% of current fees. The table setting out the current fee, modelled fee, variances and projected income are shown within Appendix 1 to this report.
- 7.4 The projected income level from January 1 2018 – July 31 2018 as a result of the proposed changes is £616,418. Annually this equates to £1,056,699, which is in line with the projected income for 2017/18 of £1,032,734.

8. Legal implications

- 8.1 The Council can set its own fees for the regimes listed in Appendix 1 of this report. The fee must be reasonable and cover the Council's costs in the administration of those application types and further costs to ensure compliance.
- 8.2 All of the regimes (excluding Gambling) are covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009 which implements the EU Services Directive into UK law requires that fees charged in relating to authorisations must be proportionate to the effective cost of the process. The proposed fees must recover the council's costs in relation to the licensing process and cannot be used as an economic deterrent or to raise funds. The fees as proposed should enable to Council to recover its reasonable costs.

- 8.3 If the proposed fee structure results in a surplus or loss for the financial year there will be an appropriate reduction or increase in fees as the case may be for the following financial year.

Appendices

Appendix 1 – Proposed Fees 2018

If you have any queries about this report or wish to inspect any of the background papers, please contact:

Mr Kerry Simpkin, Licensing Service Consultation Team Manager

Background Papers

Licensing Fee Review Excel Spreadsheet

2018 Licensing Service Type 2 & 3 Licensing Regime Fees (Excluding Street Trading)

Fee Regime Type*	Licence/Permission Type	Type	Current Fee	Modelled cost to the council	Statutory Limit	Fee to be set	Change in Fee	Variance	Income Level (proposed fees)	Predicted Volume
Type 2	Gambling - Casino - Gambling Act 2005	Annual Fee	£3,000	£3,009	£3,000	£3,000	£0	0%	£63,000	21
		Variation	£2,000	£2,017	£2,000	£2,000	£0	0%	£8,000	4
		Transfer	£332	£335	£1,350	£335	£3	1%	£335	1
		Re-installment	£332	£335	£1,350	£335	£3	1%	£0	0
		Duplicate	£21	£22	£25	£22	£1	2%	£0	0
		Change of Details	£50	£116	£50	£50	£0	0%	£0	0
	Bingo Premises - Gambling Act 2005	New	£3,500	£3,515	£3,500	£3,500	£0	0%	£3,500	1
		Annual Fee	£1,000	£1,618	£1,000	£1,000	£0	0%	£0	0
		Variation	£1,750	£1,763	£1,750	£1,750	£0	0%	£1,750	1
		Transfer	£341	£344	£1,200	£344	£3	1%	£0	0
		Re-instatement	£341	£344	£1,200	£344	£3	1%	£0	0
		Provisional Statement	£3,500	£3,510	£3,500	£3,500	£0	0%	£0	0
		License App	£375	£378	£1,200	£378	£3	1%	£0	0
		Duplicate	£21	£22	£25	£22	£1	2%	£0	0
	Change of Details	£50	£116	£50	£50	£0	0%	£0	0	
	Gambling Betting (Other) - Gambling Act 2005	New	£3,000	£3,014	£3,000	£3,000	£0	0%	£9,000	3
		Annual Fee	£600	£1,493	£600	£600	£0	0%	£69,000	115
		Variation	£1,500	£1,506	£1,500	£1,500	£0	0%	£1,500	1
		Transfer	£375	£378	£1,200	£378	£3	1%	£0	0
		Reinstatement	£376	£378	£1,200	£378	£2	1%	£0	0
		Provisional Statement	£3,000	£3,010	£3,000	£3,000	£0	0%	£0	0
		License App	£375	£378	£1,200	£378	£3	1%	£0	0
		Duplicate	£21	£22	£25	£22	£1	2%	£22	1
	Change of Details	£50	£116	£50	£50	£0	0%	£0	0	
	Betting Tracks - Gambling Act 2005	New	£2,500	£2,508	£2,500	£2,500	£0	0%	£0	0
		Annual Fee	£1,000	£1,618	£1,000	£1,000	£0	0%	£1,000	1
		Variation	£1,250	£1,259	£1,250	£1,250	£0	0%	£0	0
		Transfer	£375	£378	£950	£378	£3	1%	£0	0
		Reinstatement	£370	£373	£950	£373	£3	1%	£0	0
		Provisional Statement	£2,500	£2,507	£2,500	£2,500	£0	0%	£0	0
License App		£375	£378	£950	£378	£3	1%	£0	0	
Duplicate		£21	£22	£25	£22	£1	2%	£0	0	
Change of Details	£50	£116	£50	£50	£0	0%	£0	0		
Family Entertainment Centre - Gambling Act 2005	New	£2,000	£2,101	£2,000	£2,000	£0	0%	£2,000	1	
	Annual Fee	£750	£1,516	£750	£750	£0	0%	£0	0	
	Variation	£1,000	£1,012	£1,000	£1,000	£0	0%	£0	0	
	Transfer	£375	£378	£950	£378	£3	1%	£0	0	
	Reinstatement	£375	£378	£950	£378	£3	1%	£0	0	
	Provisional Statement	£2,000	£2,065	£2,000	£2,000	£0	0%	£0	0	
	License App	£375	£378	£950	£378	£3	1%	£0	0	
	Duplicate	£21	£22	£25	£22	£1	2%	£0	0	
Change of Details	£50	£116	£50	£50	£0	0%	£0	0		

Adult Gaming Centre - Gambling Act 2005	New	£2,000	£2,202	£2,000	£2,000	£0	0%	£0	0
	Annual Fee	£1,000	£1,516	£1,000	£1,000	£0	0%	£11,000	11
	Variation	£1,000	£1,012	£1,000	£1,000	£0	0%	£0	0
	Transfer	£375	£378	£1,200	£378	£3	1%	£378	1
	Reinstatement	£370	£373	£1,200	£373	£3	1%	£0	0
	Provisional Statement	£2,000	£2,102	£2,000	£2,000	£0	0%	£0	0
	License App	£375	£378	£1,200	£378	£3	1%	£0	0
	Duplicate	£21	£22	£25	£22	£1	2%	£0	0
Temporary Use Notices - Gambling Act 2005	Change of Details	£50	£116	£50	£50	£0	0%	£0	0
	New	£500	£215	£500	£215	£-285	-57%	£0	0
Fireworks - Fireworks Regulations 2004	Duplicate	£25	£22	£25	£22	£-3	-14%	£0	0
	New	£500	£322	£500	£322	£-178	-36%	£0	0
	Renewal	£500	£322	£500	£322	£-178	-36%	£0	0
Auctions - Greater London Council (General Powers) Act 1984, Part 6	New	£763	£774		£774	£11	1%	£6,190	8
Animal Boarding Establishments - Animal Boarding Establishments 1963	New	£1,154	£1,164		£1,164	£10	1%	£0	0
	Renew	£556	£559		£559	£3	1%	£0	0
	Duplicate	£21	£22		£22	£1	2%	£0	0
Dangerous Wild Animals - Dangerous Wild Animals Act 1976	New	£990	£994		£994	£4	0%	£0	0
	Renewal	£330	£333		£333	£3	1%	£0	0
	Duplicate	£21	£22		£22	£1	2%	£0	0
Dog Breeding Establishments - Breeding of Dogs Act 1973	New	£816	£820		£820	£4	1%	£0	0
	Renewal	£497	£500		£500	£3	1%	£0	0
	Duplicate	£21	£22		£22	£1	2%	£0	0
Exhibitions (Prescribed venues) - Greater London Council (General Powers) Act 1966	New	£843	£855		£855	£12	1%	£0	0
	Renewal	£359	£363		£363	£4	1%	£727	2
	Duplicate	£21	£22		£22	£1	2%	£22	1
Marriage Approvals - Marriages and Civil Partnerships (Approved Premises) Regulations 2005	New	£1,165	£1,176		£1,176	£11	1%	£23,517	20
	Renewal	£808	£815		£815	£7	1%	£25,269	31
	Change of Resp. person	£81	£82		£82	£1	1%	£163	2
	Amend App	£196	£198		£198	£2	1%	£0	0
	Change of Details	£123	£125		£125	£2	1%	£0	0
	Duplicate	£21	£22		£22	£1	2%	£0	0
Performing Animals - Performing Animals (Regulations) Act 1925	New	£695	£698		£698	£3	0%	£0	0
	Variation	£366	£368		£368	£2	1%	£0	0
	Inspection	£290	£291		£291	£1	0%	£0	0
	Copy of Register	£7	£7		£7	£0	2%	£0	0
	Duplicate	£21	£22		£22	£1	2%	£0	0
Pet Shops - Pet Animals Act 1951	New	£1,247	£1,258		£1,258	£11	1%	£0	0
	Renewal	£621	£625		£625	£4	1%	£0	0
	Duplicate	£21	£22		£22	£1	2%	£0	0
Riding Establishments - Riding Establishments Act 1964	New	£1,413	£1,417		£1,417	£4	0%	£0	0
	Renewal	£964	£966		£966	£2	0%	£1,932	2
	Duplicate	£21	£22		£22	£1	2%	£0	0
Zoo - Zoo Licensing Act 1981	New	£27,234	£27,473		£27,473	£239	1%	£0	0
	Renewal	£35,665	£36,018		£36,018	£353	1%	£0	0
	Exemption Request	£2,127	£2,141		£2,141	£14	1%	£0	0
	Alteration	£2,198	£2,213		£2,213	£15	1%	£0	0
	Transfer	£187	£189		£189	£2	1%	£0	0
	Duplicate	£21	£22		£22	£1	2%	£0	0

Type 3	Hypnotism - Hypnotism Act 1952	New	£521	£527		£527	£6	1%	£0	0
		Renewal	£202	£204		£204	£2	1%	£0	0
		Duplicate	£21	£22		£22	£1	2%	£0	0
	Sports Ground - Safety at Sports Grounds Act 1975	New	£8,835	£8,970		£8,970	£135	2%	£8,970	1
		Replacement	£8,602	£8,736		£8,736	£134	2%	£0	0
		Transfer	£227	£230		£230	£3	1%	£0	0
		Duplicate	£21	£36		£36	£15	71%	£0	0
	Licensed Sex Shops/ Cinema/ Hostess Bar - Local Government (Miscellaneous Provisions) Act 1982	New	£4,297	£4,322		£4,322	£25	1%	£8,644	2
		Renewal	£3,348	£3,361		£3,361	£13	0%	£33,612	10
		Variation	£988	£1,000		£1,000	£12	1%	£0	0
		Transfer	£329	£333		£333	£4	1%	£666	2
		Para 7 Waiver	£717	£724		£724	£7	1%	£0	0
		Duplicate	£21	£22		£22	£1	2%	£0	0
	Sexual Entertainment Venues - Local Government (Miscellaneous Provisions) Act 1982	New	£3,960	£3,981		£3,981	£21	1%	£11,944	3
		Renewal	£3,268	£3,278		£3,278	£10	0%	£52,446	16
		Variation	£1,065	£1,078		£1,078	£13	1%	£4,312	4
		Transfer	£298	£302		£302	£4	1%	£302	1
		Para 7 Waiver	£701	£707		£707	£6	1%	£0	0
		Duplicate	£21	£22		£22	£1	2%	£0	0
	Scrap Metal Dealers (Site) - Scrap Metal Dealers Act 2013	New	£511	£516		£516	£5	1%	£0	0
		Renewal	£269	£272		£272	£3	1%	£0	0
		Variation	£319	£322		£322	£3	1%	£0	0
		Duplicate	£21	£22		£22	£1	2%	£0	0
	Scrap Metal Dealers (Collector) - Scrap Metal Dealers Act 2013	New	£596	£602		£602	£6	1%	£0	0
		Renewal	£269	£272		£272	£3	1%	£0	0
		Variation	£234	£236		£236	£2	1%	£0	0
		Duplicate	£21	£22		£22	£1	2%	£0	0
Special Treatment Premises - London Local Authorities Act 1991	New (high risk)	£2,437	£2,457		£2,457	£20	1%	£0	0	
	New (low risk)	£2,328	£2,346		£2,346	£18	1%	£281,481	120	
	Renewal (high risk)	£1,768	£1,777		£1,777	£9	0%	£0	0	
	Renewal (Low Risk)	£1,768	£1,777		£1,777	£9	0%	£406,851	229	
	Transfer	£193	£196		£196	£3	1%	£2,741	14	
	Variation	£609	£617		£617	£8	1%	£16,053	26	
	Duplicate	£21	£25		£25	£4	19%	£25	1	
	Removal of treatment	£183	£185		£185	£2	1%	£0	0	
	Renewal of provisional	£183	£185		£185	£2	1%	£0	0	
	Confirmation of provisional	£1,268	£1,270		£1,270	£2	0%	£0	0	
	Change of Details	£115	£116		£116	£1	1%	£348	3	
Total										
£1,056,699										

* The fee types relate to the powers for setting the fee levels.

Type 1 regimes - statutory set fees with no powers to amend

Type 2 regimes - statutory cap on the fee that can be set by the LA

Type 3 regimes - no statutory restriction on fee level except for recovering reasonable costs

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City of Westminster

Licensing Committee Report

Date:	Wednesday 29 th November 2017
Classification:	For General Release
Title:	Department for Digital, Culture, Media and Sport (DCMS) Consultation on proposals for changes to Gaming machines and Social Responsibility Measures under the Gambling Act 2005
Report of:	Director of Public Protection and Licensing
Wards Affected:	All
Financial Summary:	N/A.
Report Author and Contact Details:	Mr Kerry Simpkin, Licensing Service Consultation Team Manager. Tel: 020 7641 1840

1. Executive Summary

- 1.1 The report summarises the public consultation that has been initiated by the Department for Digital, Culture, Media & Sport (DCMS) on proposals for changes to Gaming Machines and Social Responsibility Measures relating under the Gambling Act 2005 (the Act).

2. Recommendations

- 2.1 The Committee note the consultation and feedback any views to the Licensing Service by the 5th January 2018 prior to the submission of the Council's formal response.

3. Reasons for Decision

- 3.1 The Deputy Leader/Cabinet Member for Business, Culture and Heritage will be approving the Council's response to this consultation. However, as the Licensing Authority the Committee will have valid views on the consultation proposals that should be considered in the response to this consultation. Members of the Licensing Committee have the opportunity to pass on their views to the Licensing Service prior to the formal approval of the Council's response.

4. Background information, including policy context

- 4.1 The Gambling Act 2005 (the Act) provides a regulatory framework for gambling in England, Scotland and Wales. The Act sets out a number of licensing requirements associated with the provision of facilities for gambling and the supply of equipment for gambling. The Council, as Licensing Authority, is responsible for the Licensing of Premises Licences within Westminster. The Gambling Commission is responsible for Operating and Personal Licences as well as setting the standards and approach to gambling regulation across the country.
- 4.2 The Act is set on three licensing objectives:
 - 4.2.1 Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
 - 4.2.2 Ensuring that gambling is conducted in a fair and open way
 - 4.2.3 Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 4.3 Operating and personal licences issued by the Commission relate to the individual who facilitates or manages gambling or an organisation that acts as a gambling operator. The Gambling Commission impose Licence Conditions and Codes of Practice (LCCP) on operators and personal licence holders. The LCCP sets out Social Responsibility measures with which Operating Licence holders must comply.
- 4.4 The Gambling Commission also produces guidance for Licensing Authorities on the interpretation of the Act and includes references to the requirements placed on operators through the LCCP.
- 4.5 Licensing Authorities are responsible for issuing premises licences under the Act. There are six categories of premises licences that the Licensing Authority will consider and determine. These are:
 - 4.5.1 Casinos (converted casinos),
 - 4.5.2 Bingo,
 - 4.5.3 Betting (Tracks),
 - 4.5.4 Betting (Other) (betting shops or LBOs),
 - 4.5.5 Adult Gaming Centres (Arcades for 18 and over), and
 - 4.5.6 Family Entertainment Centres (Arcades that permit children to enter).
- 4.6 The Licensing Authority is also responsible for considering and determining gaming machine permits and acknowledging notices relating to entitlements to gaming machines in alcohol licensed premises.
- 4.7 The Act permits gaming machines which are distinguished across different categories (A - D) and then sub-categorised for specific types of stakes and

prizes (see Appendix 1). The Gambling Commission issues technical standards for gaming machines but the government, via DCMS, sets the maximum stakes and prizes for these machines.

- 4.8 Each type of gambling premises licence, gaming machine permit and notification have specific statutory limits on the number and category of gaming machines that are permitted to be made available on the premises.
- 4.9 The Licensing Authority is specifically prohibited in the Act from conditioning premises licences or restricting gaming machine permits relating to the stake, prizes or entitlement for gaming machines.
- 4.10 The Council has been heavily involved with the Gambling Commission and has been leading the local authority approach to gambling regulation. A great deal of work has been undertaken to develop a robust approach to considering and determining gambling premises licences within Westminster. The Council, in partnership with Manchester City Council and the Local Government Association (LGA) commissioned research and the development of a local gambling risk index which was the first of its kind in the UK. This risk index has developed a greater understanding of who are at risk to gambling and where they are located within Westminster.
- 4.11 The issues and concerns surrounding the number, location and gaming machine offer of betting shops have been a significant issue for the last 10 years since the Act came into effect. Westminster has been one of the very few local authorities that have been able to refuse applications for betting shops within its area based on the impact that the premises may have on the vulnerable. The council has also implemented reviews on the impact of betting shops, these have resulted in some of the most stringent conditions placed upon a betting shop.
- 4.12 In addition to having a robust regulatory approach to gambling, the Licensing Service has been active in engaging with gambling operators and key stakeholders within gambling to develop working relationships and foster effective working practise.
- 4.13 Westminster's Licensing Service has been involved in providing technical support to private members bill within the Lords looking to effect changes to the Act to specifically address the concerns surround category B2 gaming machines, otherwise known as Fixed Odds Betting Terminals (FOBTs) within betting shops.

5. Consultation Proposals

- 5.1 The Government announced a review of gaming machines and social responsibility measures in October 2016. The objective of the review was to ensure that there is the right balance between a sector that can grow and contribute to the economy, and one that is socially responsible and doing all it should to protect consumers and communities, including those who are just about managing.

- 5.2 Westminster's Licensing Service met with DCMS policy officers in 2016, in relation to the review of gaming machines and social responsibility measures. At these sessions officers were able to explain Westminster's approach and views on the impacts of some categories of gaming machines and other social responsibility measures that could be considered.
- 5.3 Following a call for evidence, during which DCMS received 275 submissions, a set of proposals has been produced which is now the subject of public consultation. A summary of the proposals is as follows:
- 5.3.1 DCMS believe that the current regulation of **B2 gaming machines** is inappropriate to achieve our stated objective. We are therefore consulting on regulatory changes to the maximum stake, looking at options between £50 and £2, in order to reduce the potential for large session losses and therefore to potentially harmful impacts on players and their wider communities.
- 5.3.2 While the industry proposes increases to the remaining **stakes and prizes, permitted numbers and allocations across other categories of machine** (B1, B3, B3A, B4, C and D gaming machines), we believe retention of the current regulatory environment will better protect players from potential harm than industry's proposed increases.
- 5.3.3 DCMS is aware that the factors which influence the extent of harm to the player are wider than one product, or a limited set of parameters such as stakes and prizes. These include factors around the player, the environment and the product. We are therefore also consulting on **corresponding social responsibility measures across gaming machines that enable high rates of loss, on player protections in the online sector, on a package of measures on gambling advertising and on current arrangements for the delivery of research, education and treatment (RET)**. Within this package, we want to see industry, regulator and charities continue to drive the social responsibility agenda, to ensure that all is being done to protect players without the need for further Government intervention, and that those in trouble can access the treatment and support they need.

B2 gaming machines (Fixed Odds Betting Terminals)

- 5.4 The proposals from DCMS relating to B2 gaming machines are probably the most important in terms of the potential impact that any change in stakes and prizes may have on the vulnerable.
- 5.5 In response to the call for evidence, there was widespread support for a reduction in stake limits for B2 machines to £2 (Local authorities, charities and religious groups). The betting sector, represented by the Association of British Bookmakers (ABB), did not seek an increase in either stake or prize limits across the gaming machine categories permitted in betting shops, but has argued for the need to maintain the status quo, specifically on B2 machines.

- 5.6 The Government, although acknowledging that B2 gaming machines are important to the economic viability of betting shops, cannot ignore the evidence put forward on the concerns relating to the impact of B2 machines. The consultation document that DCMS has produced provides a significant amount of evidence which has informed the decision to seek a reduction in the current stake for B2 gaming machines.
- 5.7 It is important to note that the category gaming machines relate to the type of games/gaming that can be played on them. This does not necessarily limit the machine to just B2 game content. Gaming machines in betting shops can offer a large number of different games within the gaming machine. Those games can range from category B2 games to category D games. Each game has the different maximum stake and prizes required by law. B2 games can be described as slots or non-slots. Slots are games that are either mechanical or virtual in nature and which use spinning reels. Non-slots are virtual games of the type played in casinos, primarily roulette, and other virtual sporting events such as horse racing and dog tracks.
- 5.8 The consultation sets out 4 options that they are seeking views on. These are:
- Option 1 Maximum stake reduced to £50 on all B2 content
 - Option 2 Maximum stake reduced to £30 on all B2 content
 - Option 3 Maximum stake reduced to £20 on B2 non-slots and £2 on B2 slots
 - Option 4 Maximum stake reduced to £2 on all B2 content
- 5.9 An impact assessment has been conducted as a result of these options and the consultation paper does set out the potential impact that each option may have on reducing the impact on those at risk or suffering from problem gambling.
- 5.10 Based on the evidence provided within the consultation document and from the research and experience gained on the impact of gambling and risk to the vulnerable, option 4 above may be the preferred option. However, there are significant concerns in respect of the impact on those at risk of gambling related harm associated with B3 gaming machines, which already offer a £2 maximum stake
- 5.11 The reduction to a maximum stake of £2 will match that of B3 gaming machines, for which there are already concerns over the impact of those machines. The evidence suggests that B3 games have a significant impact on the vulnerable. The Gambling Commission has produced evidence from industry data showing that session losses and session duration on B3s have comparability with B2 gaming machines. This is a concern as the rate of problem gambling associated with B3 machines is 4.2% in bingo premises

and 11.5% in betting shops. Both of these rates are significantly higher than the headline problem gambling rate of 0.8%. Officers will consider whether a submission should be made to seek changes to B3 stakes and prizes further (currently £2/£500).

Stakes and prizes on other gaming machines

- 5.12 The second proposal is to keep the current maximum stakes and prizes for all other gaming machines categories at the current level except category D gaming machines that offer prize gaming such as a crane grab machine. For category D machines that provide prize gaming it is proposed to increase the maximum stake and prize from £1/£70 to £2/£100. This small increase has been put forward by the industry and the government believes that the increase would be within keeping with the objective of this review and that these activities are low risk.
- 5.13 The Council's response may indicate that it is broadly supportive of maintaining the current stakes and prizes at the current levels and increasing the low risk prize gaming stake and prize. However, there are concerns with the impact of B3 gaming machines on the vulnerable and the increasing popularity of these machines.

Gaming machine allocations

- 5.14 The majority of responses to the government's call for evidence on gaming machine allocation limits on premises licences were from the Casino sector. The casino sector proposed to increase the number of gaming machines permitted within converted casino premises from 20 category B (they can have unlimited C or D gaming machines) to a gaming machine to table ratio similar to the approach already in place for small and large casinos (Westminster is not permitted to have any small or large casinos as the location of these premises is regulated). The proposed new ratio for converted casinos by industry was a 3:1 ratio with a maximum 80 machines.
- 5.15 The Government are minded to maintain the status quo relating to the number of gaming machines in casino premises.
- 5.16 Westminster has the highest number of converted casinos in the country. We have seen over the past 10 years some casino operators moving two casino premises licences into one premise with a clearly defined split to meet the statutory requirement that no premises can have two licences issued to it. The purpose of bringing two casino licences under one roof is to increase the gaming machines that can be offered on the premises, which is up to a maximum of 40. These venues are large and have the floor space to maintain the full casino environment without creating undesirable machine sheds. Casinos are also the most highly regulated gambling premises that are permitted within the country. That is why they are permitted to offer the highest category of gaming machine B1 with a maximum stake of £5 and maximum prize of £10,000.

- 5.17 Although maintaining the status quo may be appropriate, further consideration is needed in terms of Westminster's position.
- 5.18 Further proposals were made from Green King, an alcohol licensed premises operator, to increase the automatic entitlement for category C and D gaming machines in pubs from 2 to 4 which the consultation proposes to reject. The council's response will support that decision as there is already a process via gaming machines permits to obtain more gaming machines after an assessment of the risk from the licensing authority and the potential risk of increase gambling opportunities within licensed premises without suitable safeguards.
- 5.19 The arcade sector, via their representative association, proposed a new category of gaming machine for adult gaming centres which offered a maximum stake of £10 and a maximum prize of £125. The consultation does not seek to put this forward as a formal proposal and DCMS is not supportive of this option. The council is likely to support the consultation position not to add this new gaming machine type due to the risks associated with the proposal. Further evidence is required on the impacts of other types of gaming machines before new categories of machines are added to the regulatory framework.
- 5.20 There were proposals from the industry to permit contact payments from credit and debit cards. This would be a significant shift from the current regulatory framework which prohibits credit and debit card payments via gaming machines. As a result, the government will reject this approach which we are proposing to support.

Social responsibility measures

- 5.21 The government, as part of their call for evidence, requested responses on the effectiveness of social responsibility measures implemented by industry since 2013 and on the effects of gambling activities. The responses to the call highlighted the perceived inadequacies of industry codes on social responsibility, specifically relating to gaming machines.
- 5.22 Of particular note was the measures implemented by the Association of British Bookmakers (ABB) code on social responsibility. This code introduced voluntary measures that players could select to limit their spend and the time they play the machine. The measures were put in place on B2 gaming machines in betting shops and the results found that only 0.5% of machine sessions in the first month after its implementation included a voluntary time and money limit. The betting sector also introduced a Player Awareness System on B2 machines which provided information to the player during their session. However, the evaluation of that system found that it had potential but it needed improvement to be successful in its aims.
- 5.23 The Government is proposing that more work is needed in this area by the industry, and specifically, the evaluation of measures to ensure that they are effective. There is also a need to roll out social responsibility measures across all B1, B2 and B3 gaming machines rather than limit it to one sub-

category of machines. The government is also asking the Gambling Commission to look at and advise tracked play on category B machines. This would enable greater information to be gathered on player behaviour and those who may be at risk to gambling related harm.

- 5.24 The consultation document also refers to social responsibility measures for online gambling. The Licensing Authority is not responsible for regulating online gambling, which is the responsibility of the Gambling Commission. However, there are significant concerns over the social responsibility measures implemented by the online sector as well as the way that they advertise their products and games. The government has recognised this and proposed a number of measures that may address reduce the impact on the vulnerable and children.

Local Authorities

- 5.25 The Government requested in its 'catch all' questions views from local authorities in respect of other issues. The main respondent to this was from the LGA on behalf of local authorities and 29 other local authorities. They have proposed that a Cumulative Impact Assessment (CIA) provision should be implemented to provide more powers to manage gambling at a local level.

The DCMS response to this was that it believes that gambling can continue at a local level, and that existing powers can and should be used to ensure licensing objectives are met. The DCMS specifically refer to the new assessment of risk that local authorities can undertake, referred to as Local Area Profiles (LAPs). The LAP can be referred to within the Council's Statement of Gambling Principles (Policy) and set out the areas within the Council's area where certain key premises or areas have been identified as being at risk. DCMS refer to Westminster's approach where we have used the current powers effectively to reject gambling applications. This is a specific reference to the three betting shops that we have refused which have not been challenged and the local risk index produced on our behalf by Geofutures. They also refer to the powers under planning and the tools available within that regulatory regime.

- 5.26 DCMS considers that the current powers for local authorities are adequate and that a specific CIA requirement is not needed.
- 5.27 The Council's response to this will set out our approach and that although it has been effective there is still an assumption within the Act to permit gambling. Consideration will be given to whether additional powers would be welcomed and if those powers should be via a CIA.

6. Council response process

- 6.1 The Licensing Service will be preparing a response with the council's Policy officers. Any submissions from members will be considered in drafting that response to this consultation.

6.2 The final draft of the council's response to this DCMS consultation will be presented to the Cabinet Member for Business, Culture and Heritage who will approve the final submission to DCMS. The deadline for the submission to DCMS is the 23rd January 2018.

Appendices

Appendix 1 – Current summary of gaming machine categories and entitlements

Appendix 2 – Current summary of machine provisions by premises

If you have any queries about this report or wish to inspect any of the background papers, please contact:

Mr Kerry Simpkin, Licensing Service Consultation Team Manager – Tel: 020 7641 1840

Background Papers

DCMS Consultation on proposals for changes to Gaming Machines and Social Responsibility Measures dated October 2011

DCMS Impact Assessment (IA) on the Consultation on proposals for changes to Gaming Machines and Social Responsibility Measures dated 31/10/2017

Summary of gaming machine categories and entitlements

Category of machine	Maximum stake (from Jan 2014)	Maximum prize (from Jan 2014)
A	Unlimited – No category A gaming machines are currently permitted	
B1	£5	£10,000*
B2	£100	£500
B3A	£2	£500
B3	£2	£500
B4	£2	£400
C	£1	£100
D – non-money prize	30p	£8
D – non-money prize (crane grab machines only)	£1	£50
D – money prize	10p	£5
D – combined money and non-money prize	10p	£8 (of which no more than £5 may be a money prize)
D – combined money and non-money prize (coin pusher or penny falls machines only)	20p	£20 (of which no more than £10 may be a money prize)

* With option of max £20,000 linked progressive jackpot on premises basis only

Summary of machine provisions by premises

Premises type	Machine category						
	A	B1	B2	B3	B4	C	D
Large casino(machine/table ratio of 5-1 up to maximum)	Maximum of 150 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 150 (subject to machine/table ratio)						
Small casino (machine/table ratio of 2-1 up to maximum)	Maximum of 80 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 80 (subject to machine/table ratio)						
Pre-2005 Act casino(no machine/table ratio)	Maximum of 20 machines categories B to D (except B3A machines), or any number of C or D machines instead						
Betting premises and tracks occupied by pool betting	Maximum of 4 machines categories B2 to D (except B3A machines)						
Bingo premises¹	Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4					No limit on category C or D machines	
Adult gaming centre²	Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4					No limit on category C or D machines	
Licensed family entertainment centre³	No limit on category C or D machines						
Family entertainment centre (with permit)³	No limit on category D machines						
Clubs or miners' welfare institute (with permits)⁴	Maximum of 3 machines in categories B3A or B4 to D						
Qualifying alcohol-licensed premises	1 or 2 machines of category C or D automatic upon notification						
Qualifying alcohol-licensed premises (with licensed premises gaming machine permit)	Number of category C-D machines as specified on permit						
Travelling fair	No limit on category D machines						



City of Westminster

Licensing Committee Report

Date:	Wednesday 29 th November 2017
Classification:	For General Release
Title:	Licensing Charter Update
Report of:	Director of Public Protection and Licensing
Wards Affected:	All
Financial Summary:	N/A.
Report Author and Contact Details:	Mr David Sycamore, Licensing Team Manager. Tel: 020 7641 8556

1. Executive Summary

- 1.1. This report provides an update for Members of the Committee on the progress on delivering the City for All year 2 commitment to introduce a voluntary standard, now named the Westminster's Licensing Charter.

2. Recommendations

- 2.1 Members are asked to note the contents of the report. Members will receive further updates on the Licensing Charter's progress at future Licensing Committee hearings.

3. Reasons for Decision

- 3.1 The report has been provided to inform the Licensing Committee of the progress with delivering the Westminster Licensing Charter.

4. Background information, including policy context

- 4.1 Westminster City Council has set out a commitment within year 2 of its City For All vision to "support the entertainment industry to develop a voluntary Westminster Standard which promotes responsible behaviour amongst licensees and sets the standard in terms of caring for the welfare of their patrons and being good neighbours". This standard has been called Westminster's Licensing Charter (the Charter).

- 4.2 The Charter focuses on recognising achievement in good premises, driving forward good practice, through the use of a range of initiatives, within individual premises and across a wider area or district. Protection of the vulnerable from harm is at the core of this work, supporting key licensing objectives.
- 4.3 The Charter also seeks to maximise the benefit of the council, police and industry, working together to develop a proactive, coordinated plan of action to diversify and promote the evening and night time economy within a defined area.
- 4.4 Our Licensing Charter work forms a key element of Westminster's successful Home Office Local Area Alcohol Action (LAAA) bid. It addresses two of the principle aims of the Home Office programme, that is, to prevent alcohol-related crime and disorder and to generate economic growth by creating a vibrant and diverse evening and night time economy.
- 4.5 The LAAA programme sets out five core challenges, and the Charter broadly addresses the second and third challenges in the LAAA programme, highlighted below:
 - 4.5.1 How can local areas improve the collection, sharing and use of data between A&E Departments, local authorities and the police?
 - 4.5.2 How can local authorities, the police and businesses ensure the safe movement of people in the night time economy, including situation where offenders are targeting vulnerable people?
 - 4.5.3 How can local areas expand their use of safe spaces?
 - 4.5.4 How can local authorities, the police and business work together to help prevent the sale of alcohol to drunks in both the off- and on-trades?
 - 4.5.5 How can local authorities, the police and business work together to help design out crime?
- 4.6 Support of our Charter work through the Home office LAAA programme benefits the council and local business with access to expertise in central government, mentoring and learning from other areas involved or previously involved, as well as access to independent initiatives such as Pubwatch, Street Pastors and Purple Flag.
- 4.7 We understand that we may also be able to access new funding streams as a result of being part of the LAAA programme and there is the added benefit of further raising the profile of our work at a national level – the Charter work supports these aims.

- 4.8 The Charter is being piloted in the Heart of London Business Alliance BID (HOLBA) area. HOLBA have committed to the Charter on behalf of their licensed businesses. Our aim is to encourage a programme of further uptake across other distinct areas of the City once the HOLBA pilot has progressed.
- 4.9 The implementation of the Charter is not to focus on finding new ways to enforce against poorly run premises and it will not interfere with the processes used by the Police or the council to deal with serious incidents.

5. Charter objectives and principles

- 5.1 The Licensing Charter is based on four key objectives which are:
 - 5.1.1 Premises are better able to support vulnerable individuals in and around their premises.
 - 5.1.2 Reductions in associated anti-social behaviour, crime and emergency health issues.
 - 5.1.3 Evening and Night Time Economy supported to grow responsibly.
 - 5.1.4 Improved working relationship between council, police and industry and improved perception of the council amongst key operators.
- 5.2 The principles for the Licensing Charter are:
 - 5.2.1 The initiative must be industry-led and voluntary for those that want to take part and yet, contribute to a demonstrable shift in how premises operate in an area.
 - 5.2.2 Focused campaigns and information to inform those visiting licensed premises within Westminster on the risks associated with intoxication and drugs or other priority issues.
 - 5.2.3 Improving the support available for individuals who may be vulnerable as a result of intoxication, drugs or other issues in the evening and night time economy.
 - 5.2.4 Operators have a responsibility to support patrons who may be vulnerable both inside and in the vicinity of their premises and should be recognised for doing so.
 - 5.2.5 Premises should not fear having someone who is too drunk or otherwise vulnerable on the premises, provided the individual is being properly looked after.

6. Operation of the Licensing Charter within the HOLBA pilot area

- 6.1 A Charter steering group will represent local businesses signing up to the Charter, and will also involve representatives from the Council, Police and

other key stakeholders. The steering group will determine the relevant tools and initiatives to achieve the Charter objectives.

- 6.2 There are a number of tools and initiatives available that may assist businesses in achieving the objectives of the Charter. The initiative being initially used is the Best Bar None scheme, adapted for use within Westminster, with a focus on reducing vulnerability. Other initiatives could include use of 'Drinkaware' crews, creation of safe spaces, street pastors, support and information hubs, and coordinated approaches to common/dubious crimes, such as lost/stolen phones, and regular get home safe messages and communication. It will be up to the steering group to decide what best fits with its membership and area.

7. Charter commitments

- 7.1 In delivering the objectives of the Licensing Charter there has to be a commitment from business, BIDs, Council, Police and other stakeholders. As part of the commitment from businesses they will commit to:

7.1.1 Agree to work to achieve the objectives of the Licensing Charter

7.1.2 Support for and participating in initiatives

7.1.3 Share best practices and supporting other businesses within the area who have also signed up to the Charter

7.1.4 Enable the assessment and collection of information to evaluate the effectiveness of initiatives undertaken.

- 7.2 The City Council and the Police will commit to:

7.2.1 Draw in and coordinate support from voluntary schemes such as Drinkaware Crew and Street Pastors.

7.2.2 Reform the approach to identifying problem premises and tasking by using a wider range of factors than purely crime data.

7.2.3 Develop an enhanced compliance support offer which enables premises to proactively address issues in partnership with authorities and avoids the need for expensive enforcement action.

7.2.4 Develop new ways to share information about premises to help operators identify and address issues and trends before they become an enforcement problem.

7.2.5 Balanced approach to enforcement which takes into account how premises dealt with a situation such as a highly intoxicated and vulnerable individual as evidence of good practice as opposed to simply identifying the incident as evidence for enforcement. This may result in the reduction of the risk rating of the premises from the

Council and reduce the frequency and/or level of compliance inspection.

- 7.2.6 Work with the industry to trial new approaches to promoting the responsible night time economy e.g. through events which will inform future policy development and support diversification.
- 7.2.7 Police Teams able to respond effectively to incidents in the area and target repeat offenders in premises.
- 7.2.8 Support for place marketing relating to the responsible offer of the West End based on the positive actions taken by supportive premises.

8. Charter Benefits

- 8.1 There are a number of potential benefits to businesses if they sign up to the Charter. These include:
 - 8.1.1 Improved operating standards across all businesses involved and reduction in the risk of incidents occurring.
 - 8.1.2 Sharing of best practice.
 - 8.1.3 Building of good working relationships with police and local authorities.
 - 8.1.4 Reduction in the Council's risk rating and level of compliance inspections.
 - 8.1.5 Support in delivering key initiatives from the Council and key stakeholders.
 - 8.1.6 Ability to seek funding and support for campaigns and initiatives in the area.
 - 8.1.7 Evidence of being a well-run premises with good management in place in the unfortunate event of an incident occurring.
 - 8.1.8 Access to training which is beneficial to patrons in terms of safety, and to the business in terms of more engaged staff.
 - 8.1.9 Increased footfall by creating a safer evening and night time economy and a neighbourhood in which people are more inclined to visit and spend.
 - 8.1.10 Opportunity to responsibly grow and diversify the local evening and night time economy.
 - 8.1.11 Recognition for working to achieve the Licensing Charter objectives through awards or public endorsement.

- 8.2 In addition to the benefits to businesses there are a number of potential benefits to the City Council and the Police. These include:
- 8.2.1 Lowering crime and local disruption through better managed premises which could lead to freeing up of resources for other purposes.
 - 8.2.2 Reduced need for expensive compliance and enforcement action.
 - 8.2.3 Recognising area of the City as best practice and national leaders in supporting safe, well managed evening and night time economies.
 - 8.2.4 Learn lessons on future options for policy development and service delivery.
 - 8.2.5 Support for local growth and diversification of the evening and night time economy.

9. Current position and next steps

- 9.1 The Charter is being piloted in the Heart of London Business Alliance BID (HOLBA) and an adapted version of the Best Bar None scheme has been chosen as the first initiative to work towards Charter objectives and status.
- 9.2 The Westminster version of Best Bar None has been developed with stakeholders and business. A key focus is to protect the vulnerable, and ensure safety and security within the evening and night time economy.
- 9.3 HOLBA launched its Best Bar None on the 30th October in Tiger Tiger. The Leader was present to launch the event and provide a speech on her commitment to the Licensing Charter and that the Council will support HOLBA in delivering the charter objectives. This is the first in a number of initiatives that will be implemented within the HOLBA area, as part of their commitment to the Licensing Charter. The Council is supporting HOLBA with the Licensing Charter through their steering group.
- 9.4 The Council has committed to work with HOLBA to sign up 15 businesses to the Licensing Charter by the end of this financial year. Work has already begun on engagement with businesses relating to the charter within the pilot area.
- 9.5 The Council will seek to continue the development of the Licensing Charter approach within the HOLBA area, promoting initiatives that may achieve the Charters overall objectives. The Council will look for additional areas to grow this approach for the future. There has already been interest in the Licensing Charter from a number of organisations and Northbank BID.
- 9.6 Communications and information about the Charter will be coordinated through the Charter steering group.

- 9.7 The Licensing Service have developed a webpage on the council website which outlines the scope of the Charter work, building a platform of best practice and signposting to initiatives available to any area or group of businesses considering the Charter mark. The webpage address is www.westminster.gov.uk/licensing-charter.
- 9.8 We are adapting our inspection and enforcement approach to enable our officers to promote the Charter, encouraging best practice to achieve compliance, and freeing up officers to target problematic businesses that may have little regard to the safety of their patrons or the negative impacts of their business model.
- 9.9 As part of the wider Charter work and the work we are doing on the Home Officer LAAA initiative the Council are developing a partnership with Drinkaware. As part of this partnership, to promote the Charter and to put out information to remind people of the impact of alcohol may cause, especially in the festive season we will be running a social media campaign through to the first week in January 2018. The campaign is called "Stay with your pack" which is specifically about reminding people that leaving a friend or colleague who is drunk and vulnerable may lead to loss of property, personal injury of being a victim of crime. The Council has set up a webpage (www.westminster.gov.uk/drinkaware) to provide further information on the issues that the campaign is covering and also where to get further support relating to alcohol and drug misuse. We are working with colleagues in our Public Health department relating to this campaign and the links with additional support services.

If you have any queries about this report or wish to inspect any of the background papers, please contact:

Mr David Sycamore, Licensing Team Manager, Tel: 020 7641 8556 or Mr Kerry Simpkin, Licensing Service Consultation Team Manager, Tel: 020 7641 1840

Background Papers

Westminster Licensing Charter

Licensing Charter briefing note produced by Annette Acik, Licensing Service Manager dated 25th October 2017

City for All year 2

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City of Westminster

Licensing Committee Report

Date:	Wednesday 29 th November 2017
Classification:	For General Release
Title:	The Government Response to the Report from the House of Lords Select Committee on the Licensing Act 2003
Report of:	Director of Public Protection and Licensing
Wards Affected:	All
Financial Summary:	N/A.
Report Author and Contact Details:	Mr Kerry Simpkin, Licensing Service Consultation Team Manager. Tel: 020 7641 1840

1. Executive Summary

- 1.1 On the 4th April 2017 the House of Lords Select Committee published its report into the Licensing Act 2003. The report made 73 recommendations on how the Licensing Act or associated regulations could be amended, repealed or enhanced. These recommendations were the result of evidence submitted in writing and orally at hearings.
- 1.2 The Government published its response to the House of Lords Select Committee report on the 6th November 2017. The Government has responded to each of the recommendations within the report.
- 1.3 This report summarises the recommendations made by the House of Lords Select Committee, and the Government's response to those recommendations. It also considers the potential impact of recommendations on Westminster's Licensing Service and possible next steps.

2. Reasons for Decision

- 2.1 The report has been provided for the Licensing Committee for its information.

3. Background information, including policy context

- 3.1 On the 25th May 2016 the House of Lords Select Committee on the Licensing Act 2003 (the Act) was appointed to consider and report on the Act's implementation. On the 30th June 2016 the Committee issued a call for evidence and the Council submitted a written response.
- 3.2 The Committee received a large number of responses from local authorities, licensed operators and businesses, residential representatives and those involved in the legal profession. The Committee accepted 175 submissions, one of which was from Westminster City Council.
- 3.3 In addition to written submissions, the Committee invited respondents to provide oral evidence. The Committee heard from 65 witnesses and Mr Richard Brown, on behalf of Westminster's Licensing Advice Service, provided oral evidence at the hearing. He spoke about the potential impact of licensable activities on residents and empowerment of residents within the Act enabling them to respond to emerging licensable activity and issues within their neighbourhood.

4. House of Lords report recommendations and Government response

- 4.1 The 75 recommendations made by the Select Committee can be considered across a number of main themes. A summary of the key recommendations is set out below in bold type, alongside the government's response.

Taxation

- 4.2 **The Government should bring in minimum unit pricing within England and Wales.**
The Government's response to this was that minimum unit pricing was still under review and that once the legal case between the Scottish Government and the Scotch Whisky Association was completed the government would assess evidence. On the 15th November the Supreme Court handed down its judgement in this case. The Supreme Court has ruled in favour of the Scottish Government in implementing the minimum unit pricing. We await further response from the Government.
- 4.3 **The Government should look at other methods of taxation to control excessive drinking.** The Council's written response to the House of Lords relating to taxation stated that the authority did not consider pricing and taxation as an appropriate or effective form of control for alcohol. The government responded to this recommendation by setting out the work that has been undertaken in commissioning Public Health England to review the evidence and provide advice on the public health impacts of alcohol. The government will continue to consider a range of options to control excessive alcohol consumption through taxation and pricing.

Licensing fees

4.4 **Support for the need to locally set fees. The Select Committee urged the Government to enact the provision for permitting locally set fees, which was introduced via the Police Reform and Social Responsibility Act 2011.**

The Council, in its written submission to the Select Committee, set out the need for the power to be given to the council to set its own fee. At present the Council has a deficit of approximately £1.387m per annum, based purely on costs of administering the system without any wider considerations of costs incurred.

4.5 The Government's response to enabling locally set fees was to state that they do not intend to change the fees for licences under the Act. Although the Government acknowledges that the existing fees do not recover the costs for many licensing authorities. The Government also points to concerns from smaller local authorities that the process for calculating fees is resource intensive and complicated. The Government's final justification for not moving forward on locally set fees is because of the recent rise in business rates which has, for some, meant that their rates and annual licence fees has increased. They believe that locally set fees or any increase in centrally set fees would undermine the assistance in rate relief given to some licensees (public houses).

Coordination of planning and licensing systems.

4.6 **Proposal for the coordination and/or transfer of functions of Licensing Committees to Planning Committees.** The evidence presented to the Select Committee indicated that within some authorities there were issues with the current determination of applications at Licensing Committees. Unfortunately, the negative experiences presented to the Committee were enough to persuade them that the current system was in need of reform.

4.7 The Select Committee report recommended that the debate and the consultation on transferring functions of the licensing committee and sub-committees to planning committees should start now and that guidance should be amended to provide for better coordination between planning and licensing.

4.8 The Government response to this was that it recognises the recommendations by the Committee and that this is the start of the debate. The Government stated that it is a matter for the local authority to determine the best arrangements for their area and that the local authority can determine how to deliver their statutory functions. There is no intention to implement the recommendations of the Committee relating to the transfer of functions between the licensing committee and planning committees.

4.9 The Government does acknowledge that planning and licensing could work better together and encourages coordination where appropriate. Section 182 licensing guidance already recommends that licensing authorities secure proper integration of licensing policies with planning. The National Policy

Framework encourages parallel processing of consents. The government intends to review the guidance on the coordination between planning and licensing with a view to strengthening the call for consistency, wherever possible.

- 4.10 **Recommendation that the ‘Agent of Change’ principle be adopted in both planning and licensing guidance. This would protect both licensed premises and local residents from the consequences arising from any new developments.** The Government referred to the recent Housing White Paper which has included a proposal to amend the National Planning Policy Framework to emphasise the “Agent of Change” principles in planning policies and decisions. Consultation on this paper closed earlier this year and the Department for Communities and Local Government is currently reviewing those responses. The outcome of this consultation and any subsequent change to the National Planning Policy Framework will be consistent with the Act’s guidance.

Member training

- 4.11 **Recommendation for a minimum level of training for Councillors before they are permitted to sit on a Licensing Committee or Sub-Committee.** The Select Committee proposed that the guidance should be amended to introduce a requirement that councillors cannot take part in a hearing until the minimum level has been attained.
- 4.12 The Government accepts that improvements can be made on the effectiveness and consistency of the implementation of licensing processes and decision making. The Government recognises the importance of councillors undergoing training before being allowed to sit as a member of the sub-committee. They state that the Licensing Authority is responsible for determining what level of training is required for their committee members and that the training can be delivered in a number of different ways.

Committee processes and police evidence

- 4.13 **Recommendation that in cases where there are no longer any matters of dispute between parties but a hearing is still required by the Licensing Authority, the reasons for this should be specified.** The Government accepted that it is reasonable for the Licensing Authority to provide the reasons for requiring a hearing to be held when agreement had been reached. The Government will amend the guidance relating to this and it will set this out within the LGA licensing handbook when it is produced.
- 4.14 **Recommendation that the Licensing Act 2003 (Hearings) Regulations 2005 (Hearing Regulations) are amended to specify a quorum of three for all sub-committees. The Select Committee also recommended that regulation 21 (procedure at the hearing) and 23 (form of the hearing as a discussion) of the Hearings Regulations should be revoked as these do not regulate the process.** The Act requires that a licensing sub-committee shall be made up of three members of the licensing committee. However, the

Select Committee heard evidence that in some areas decisions are being made by a sub-committee that has more or less than three members.

- 4.15 The Government response to these recommendations is that the Act is clear in that the sub-committee must be made up of three members. They believe that there is no need to amend the Hearings Regulations relating to this but they will make their views clear within the guidance to ensure compliance in the future. The Government also do not intend to revoke regulations 21 or 23 of the Hearing Regulations as they are necessary to explicitly set out the licensing authority's power to set their own procedure for hearings.
- 4.16 The House of Lords reviewed evidence that suggested that licensing authorities are likely to take police evidence seriously without the level of scrutiny that they would undertake for other evidence presented by other parties. The Committee recommended that the guidance is being misinterpreted by licensing authorities on this matter and that the guidance should be amended. The government has agreed to amend the guidance to make the interpretation clearer.

Community and Ancillary Notices, Early Morning Restriction Orders and late Night Levy's

- 4.17 **Recommendations to repeal elements of the Act that they felt are not effective, such as Community and Ancillary sellers Notices, Early Morning Restriction Orders and Late Night Levy.** Community and Ancillary sellers Notices (CANs) were introduced within the Act by the Deregulation Act 2015 although this provision hasn't been brought into force yet. The purpose is to deregulate the serving of small quantities of alcohol by community premises and some small businesses such as guest houses and B&B's. The Committee recommended that CANs should not be introduced and the legislation relating to it repealed. The Government's response to this was that it notes the points made by the Committee in relation to concerns of abuse and the level of complexity another notification scheme may have. They are currently giving further consideration to the impact of introducing CANs in the future and will report to the House of Lords in due course.
- 4.18 Early Morning Restriction Orders (EMROs) were introduced into the Act via the police Reform and Social Responsibility Act 2011. EMROs permit a local authority to issue a blanket ban on premises operating during a period beginning at or after midnight and ending before 6am. They can be applied to particular days of the week, or different time periods on different days of the week, and can be applied to the whole or any particular part of a local authority area. They are to be used to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributed to specific premises.
- 4.19 The House of Lords Committee heard evidence that EMROs were not effective and that there are none in operation in England and Wales. A number of the respondents felt that these were fundamentally wrong in

principle and were vehemently opposed from those within the industry. This resulted in the Committee recommending that EMROs are repealed. The Government response to this was that they believed that EMROs are a powerful tool for local authorities to consider and that although no authority had adopted an EMRO they should remain as a tool for implementation when it was felt appropriate to do so.

- 4.20 There were a number of criticisms made towards the Late Night Levy (LNL) provisions within the Act. These related to the scope of the LNL in that it applied to all late night alcohol venues across the local authority area rather than being limited to those that caused the additional impact. There was also a view that the LNL is a general taxation on businesses and had limited benefits in policing and managing the [evening and] night time economy. One local authority had ceased using a LNL in favour of Business Improvement Districts which was supported by the Committee. Westminster's written response was also critical of the current blanket provisions of the LNL provisions. In our submission we made it clear that there needed to be a more flexible approach to the levy, which allows local authorities to target the levy at problem premises or groups of premises, based on particular characteristics.
- 4.21 The House of Lords Committee recommended that the LNL should be abolished in its current form. However, during the course of the enquiry the Government was planning amendments to the Act via the Policing and Crime Bill. The Bill proposed a number of changes to the LNL to enable them to be more targeted to particular problem zones rather than applying them to the whole of the local authority area. The Bill also proposed to include late night refreshment venues within the LNL which were exempted under the current system. The changes to the LNL were enacted via the Policing and Crime Act 2017. The House of Lords Committee recommended within its report that the changes to the LNL via the Policing and Crime Act 2017 should not be implemented until the Government had considered the Committees' report and responded to the recommendations.
- 4.22 The Government's response to the House of Lords Committee recommendations was that it felt that the LNL provisions are an important tool for local authorities, enabling them to collect a financial contribution from business that profit from selling alcohol late at night. This financial contribution can be channelled into funding late night policing and other costs associated with the [evening and] night time economy. Although the Committee recommended that the current split (30/70) between the local authority and the police should be changed the government doesn't intend to change the current split in income. In March 2016 the Deputy Mayor for Policing and Crime agreed to delegate the responsibility for taking decisions relating to the late light levy to the MOPAC Chief Operating Officer, these decisions can allow licensing authorities to retain up to 100% of the levy where they can demonstrate that they have considered other options and are prepared to deliver a best practice model that align with MOPAC priorities.

- 4.23 Now that the Government has responded to the Committee's report it now intends to implement the Policing and Crime Act 2017. In addition to the LNL changes this implementation will also see the introduction of Licensing Authority Cumulative Impact policies defined in statute and that there will be a requirement to produce evidence that supports that policy.

Licensing objectives

- 4.24 **Recommend that no additional licensing objectives should be added to the Act at this time.** There have been discussions about additional licensing objectives relating to public health and well-being, enjoyment of licensable activities, the provision of social or cultural activities and compliance with the Equalities Act 2010. These issues were considered by the House of Lords Committee through written and oral evidence. The addition of any new licensing objectives will either be very difficult to relate to individual premises and/or create a conflict between objectives which doesn't exist now. However, they did recommend that an application for a premises licence should, as they do in Scotland be accompanied by a disabled access and facilities statement.
- 4.25 The Government's response to the House of Lords Committee recommendations not to add additional licensing objectives was supported by the Government. However, they do not intend to amend the Act to make it a requirement for new premises to submit a disabled access and facilities statement at this time. The Government does intend to consult with organisations that represent disabled people to better understand the extent of the perceived issues with access. The Government will also look to engage with other key stakeholders including representatives from the trade to explore what practical measures can be taken without the need for additional regulations.

Appeals

- 4.26 **It was recommended that licensing authorities should publicise the reasons which have led them to settle the 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 upon.** The House of Lords Committee found from the evidence before it that when appeals were settled out of Court there was a lack of transparency for local residents in particular. Local residents may attend the hearing and then expect the decision to be implemented. If an appeal is lodged and the licensing authority then agrees to settle the appeal without going to court then the settlement may be difficult for local residents to accept.
- 4.27 The Government agree that there should be transparency around the decisions made on licensing appeals. It is their view that a licensing authority should justify with clear reasons their decision and publicise that revised decision and the reasons for the revision. The government does not intend to amend legislation surround this but does intend to amend the guidance to extend the current principles of decisions made after a hearing.

- 4.28 The quality of appeal hearings was a key point discussed by the House of Lords Committee. It was the view of some of the submissions presented to the Committee that the magistrate's courts struggle to deal with appeals appropriately and that the system should be improved. Consideration was given to alternative approaches to an appeal to the magistrate's court that are undertaken in other area of licensing such as appeals against Gambling Commission decisions going before a First-Tier tribunal and the planning system where appeals are considered by the Planning Inspectorate. In line with the earlier recommendation of transferring the licensing committee function to the planning committee it was also felt that the appeal of any of the decisions should be considered by the Planning Inspectorate and not the magistrates' courts.
- 4.29 The Government's response to this was that it did not intend to amend the appeal system within the Act. However, they accept the Committee's finding that the licensing appeals system could be improved. They intend to explore with partners best practice in this area so that they may offer ideas for future consideration.

Temporary Event Notice

- 4.30 **Recommend that Temporary Event Notice (TENs) system are not divided into community and commercial, that Licensing Authorities are given to power to object to TENs, allow the amendment of TENs at a hearing and that the guidance is amended to provide clearer guidelines on TENs simultaneously operating on adjacent plots.** The Committee considered the current TENs scheme and whether changes were needed to improve the effectiveness of the scheme if necessary. Evidence considered by the Committee related to the view that there is a need to differentiate the difference between commercial and community based TENs.
- 4.31 The Westminster's written submission set out our views on TENs, which was specifically quoted in the House of Lord Committee report. Our submission stated that 85% of the 3100 TENs received in a year were from existing licensed premises seeking an extension of their licensable activities. We proposed that an alternative would be to implement a new scheme for extending licensable activities in licensed premises for a limited period. The scheme could be similar to the approach taken for minor variations whereby the authority could consider the proposed extension and ensure that the activity is operated within the bounds of the licence conditions.
- 4.32 Unfortunately the House of Lords did not agree and actively rejected the proposal to distinguish the difference between commercial and community within the TENs system. Their view was confirmed by the government in their response and they confirmed that they have no intention to introduce a division between commercial and community premises within the TENs system.

- 4.33 The House of Lords did recommend that the Licensing Authority should be given the power to oppose TENs alongside the police and environmental health officers as well as a system to notify local councillors and local residents of TENs in a timely fashion. The Government did not feel that the evidence supported and in fact they had received views from local authorities to the contrary that licensing authorities should be able to object to TENs. It is the Government's view that there are sufficient powers for the police and environmental health officers to oppose TENs when the event will not promote the licensing objectives. The Government will however, amend the guidance to recommend that licensing authorities consider how to bring TENs to the attention of residents who may be affected by TENs.
- 4.34 The Committee also recommended that the Act is amended to enable the amendment of a TEN not only before the hearing but also during the hearing itself. At present the Act prohibits the amendment during the hearing and as a result all discussions and agreements should have been established prior to the hearing itself. Once the hearing commences the TEN will be considered as presented and either permitted or issued with a counter notice. The Government did not agree with the Committee's recommendation as it believes that there would be an impact on the effectiveness of the decision making process leading to resource implications and administrative burdens.
- 4.35 Evidence was presented to the Committee associated with the use of TENs simultaneously on adjacent plots of land and in effect creating an event in excess of the limitations on the maximum number of people permitted (499). The government's response to this was that the Act is clear on the restrictions associated with the number of TENs that can be permitted at a premises and the maximum number of persons permitted at an event. If there are concerns about the event and if it is viewed that the maximum number of persons attending the event will exceed 499 then the police and environmental health officers have the power to make an objection.

Other proposed changes

- 4.36 **Recommended that licensing authorities are provided with the power to implement a ban on super strength alcohol and blanket conditions on premises.** The Government does not intend to provide powers to local authorities to ban super-strength alcohol or implement blanket conditions on premises as recommended by the Committee.
- 4.37 **Recommended that public notices in the press to advertise an application should be removed.** The Government has stated that the previous Government had consulted on this proposal as part of a deregulatory measure in 2012. The Government is clear that these notices are important for informing the local community relating to applications and therefore they have no intention of amending the Act to remove this requirement.
- 4.38 **Recommended that blue public notices should continue to be placed in shop windows and on street lights.** The Government agrees that these are important measures to inform local residents and businesses and that it

intends to strengthen the guidance to emphasise the importance prominently displaying the notices on or near the premises to which the application relates.

- 4.39 **The House of Lords highlighted the [evening and] night time economy and welcomed the appointment of the Night Czar and other champions of the [evening and] night time economy.** The government echoed the Committee's view on the appointment of the Night Czar and other champions of the [evening and] night time economy. They believe that they will help develop the [evening and] night time economy and ease tensions between residents, local authorities and businesses. The night tube was also seen as a positive step forward for London and the development of the [evening and] night time economy.
- 4.40 **The Committee welcomed initiatives such as Business Improvement Districts, Best Bar None, and Purple Flag to develop and improve the [evening and] night time economy.** The Government welcomes the views from the Committee and are committed to continuing to work closely with the Local Alcohol Partnership Group through the Home Office Local Alcohol Action Areas programme.
- 4.41 **The Committee recommended that the Live Music Act 2012 is working broadly as intended and that there is no case for further deregulation surrounding live music. They also recommended that more is done to spread awareness of the Live Music Act 2012 to local authorities, licensed premises and local residents.** The Committee considered evidence about the Live Music Act 2012 and how that is working along with concerns about the broader risks associated with the loss of live music venues. The Government confirmed that music venues are a vibrant and vital part of society, culture and the economy and that it is keen to support and promote an environment in which the UK's live music industry can continue to thrive. The government does state that positive collaboration between venues, local authorities and residents, including raising awareness, are key to supporting this important and dynamic sector. However, they do not mention any intention to make amendments to the guidance.

5. Licensing Service approach to response

- 5.1 As expected the Government have not proposed to make any legislative changes as a result of the recommendations from the House of Lords report. There are no timeframes on the Government's proposals to amend the statutory guidance but some of the proposed clarifications and enhancement of the guidance should be reasonably simple to implement.
- 5.2 The Government response relating to the ability for local authorities to set their own fees is extremely disappointing. The Licensing Service along with colleagues within the Policy team will continue to lobby the government on the need to change the approach to licensing fees so that local authorities, especially those within London can recover their costs.

- 5.3 The Licensing Service along with colleagues from the Planning Department have already begun discussions relating to developing efficient and effective processes through best practice and IT developments. It is intended to continue to build on this to look at further options for better co-ordination between the planning and licensing process. This approach will support the Council's transformation programmes in working towards:
- 5.3.1 One front door for our customers
 - 5.3.2 Modern digital public services
 - 5.3.3 Excellent community engagement
- 5.4 The Licensing Service will produce an action plan from the House of Lords report and government response to their recommendations. Priorities will be given to changes that can be implemented quickly and achieve the Government supported recommendation or the proposed approach by Government. The action plan will also identify areas where more consideration is needed and further investigation into the potential benefits and risks can be undertaken.
- 5.5 The Licensing Service is actively working with Business Improvement Districts such as the Heart of London Business Alliance (HOLBA) and North Bank relating to the development of measures to support and improve the evening and night time economy. HOLBA is currently the pilot area for the implementation of Westminster's Licensing Charter, which is one of the year 2, City for All commitments for the Council. HOLBA's area has already been given Purple Flag accreditation and has just launched Best Bar None. The Council has also been successful in bidding for the Home Office Local Alcohol Action Area (LAAA) status for the HOLBA area. As part of the LAAA the Licensing Service will continue to work with business and other stakeholders to promote better self-regulation and the introduction of initiatives to further develop the evening and night time economy.

If you have any queries about this report or wish to inspect any of the background papers, please contact:

Mr Kerry Simpkin, Licensing Service Consultation Team Manager – Tel: 020 76541 1840

Background Papers

Westminster City Council's response to the House of Lords Select Committees call for evidence (House of Lords Reference LIC0090)

House of Lords Select Committee report on the Licensing Act 2003 dated 4th April 2017

Government response to the House of Lords select Committee report into the Licensing Act 2003 dated 6th November 2017

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City of Westminster

Licensing Committee Report

Date:	Wednesday 29 th November 2017
Classification:	For General Release
Title:	Gig and sharing economy: licensing implications associated with deliveries
Report of:	Director of Public Protection and Licensing
Wards Affected:	All
Financial Summary:	N/A.
Report Author and Contact Details:	Mr Kerry Simpkin, Licensing Service Consultation Team Manager. Tel: 020 7641 1840

1. Executive Summary

- 1.1 The report provides an overview of the licensing implications associated with deliveries.

2. Recommendations

- 2.1 The Committee note the work being undertaken by the Council and to provide lessons learnt from previous licensing applications to inform future activity.

3. Reasons for Decision

- 3.1 As the Licensing Authority the Committee will have valid views on the lessons learnt from previous licensing related to controlling the negative impacts of deliveries.
- 3.2 The Leader of the Council also announced a range of measures to Council on 8 November to control irresponsible short term letting. While this sets some of the wider policy context which the Licensing Committee will wish to be aware of, the Council's wider work on short term lets follows policy direction provided by the Leader of the Council and therefore does not fall within the remit of the Licensing Committee.

4. Background information

- 4.1 There has been an increase in complaints from residents of nuisance behaviour by food deliveries. In particular, residents have complained of noisy delivery vehicles late at night and drivers congregating in residential areas at unsociable hours and creating noise nuisances. There have also been reported problems including wider environmental issues, littering, and street urination etc. Air quality is a contentious issue in Westminster and petrol/diesel based delivery vehicles do not do any favours for air quality.
- 4.2 The Council has a number of existing powers that we can use to tackle the impacts associated with the delivery of food from premises that are causing impacts to local residents and businesses.

Anti-Social Behaviour, Crime and Policing Act 2014

- 4.3 The Anti-Social Behaviour, Crime and Policing Act 2014 (2014 Act) can be used to take action relating to anti-social behaviour. The Council have considered the use of Community Protection Notices (CPNs) under the 2014 Act as a way of addressing disruptive anti-social behaviour from delivery drivers and businesses. There are three criteria which must be considered; activity/behaviour that is persistent and continuous; which affects quality of life and is unreasonable within a location. It is difficult to provide evidence of the same person meeting the required criteria in these cases. A Public Spaces Protection Order (PSPO) requires a lengthy process in gathering evidence and there is a need for resources to enforce such orders. The main issue with a PSPO is that the problem can very quickly displace once enforcement is implemented, and therefore the matter moves to another residential area. This ease of displacement has been the reason for not implementing PSPOs. PSPOs are resource intensive and do not offer a sustainable solution, given the context of the growing trend.

Planning Powers

- 4.4 We can use our planning powers where we can evidence a material change of use in premises, where an A3 restaurant level of sales takeaway is no longer considered ancillary.

A recent example of the effective use of planning powers was a restaurant in Westbourne Grove. This premise was served a Planning Contravention Notice (PCN). The PCN required the company, under planning legislation, to provide answers to key questions asked by the Council's planning enforcement officer. The premise responded that 36% of their business was take-away, this included walk in as well as moped deliveries. They maintained though that this was still ancillary to the primary use of the premises as a restaurant.

Under A3 planning use, this premises could provide takeaway food as an ancillary function and would not breach planning control. However, in this case the percentage of takeaway food was deemed to no longer be ancillary

and breached the planning permission for that premises. The Council served an enforcement notice on the operator of this premises who subsequently agreed to cease takeaway delivery services at this premises. There is no fixed percentage in the legislation with regard to when an A3 restaurant is required to apply for an A5 mixed use. Each case is taken on its merits and the impact on the local area and residents. Without a fixed percentage, the Council needs to engage with the local community and gather evidence of any ancillary use that impacts through impact statements and observations of the property.

- 4.5 The delivery business was a significant element of their business, their response to the PCN advised that they had on average 150 vehicular movements a day, and that they delivered to an area 2.2 kilometres from the store. Therefore, residents of other local authorities were affecting our residents. The residents provided evidence, on many occasions, that there were seven delivery mopeds parked at the venue. These would leave to make a delivery and be immediately replaced by another moped. They provided evidence of litter on the street where the mopeds had been gathering, and engine noise was reported as a constant nuisance, although not a statutory one.
- 4.6 A survey of premises in key locations could be considered to identify possible breaches and planning contravention notice issued, where a change in use class may have occurred.

Parking Regulations

- 4.7 Parking regulations are enforced where a contravention occurs. Delivery vehicles, predominantly mopeds, can often take up parking spaces close to takeaway venues. However, in the Westbourne Grove case vehicles parked legally on double yellow lines outside the venue as loading and unloading was permitted.
- 4.8 During the early stages of this case the complaints the Council's Parking Marshals were directed to the area and in a 6-week period they made 737 visits and patrolled Kensington Garden Square for 100 hours. They dealt with 143 parking contraventions, issuing 70 Penalty Charge Notices (PCNs) and moved on and gave advice to over 70 motorists.
- 4.9 This approach was resource intensive and the mopeds still attended the location and parked legally when they were there for the delivery services. In another location within Marylebone ward the moped riders parked in a Council motorcycle parking bay and during spot checks of those vehicles they were found to have all paid for a Council's annual parking permit and therefore parked legally.
- 4.10 The issue here was the nuisance generated by the noise from moped engines and the riders talking to each other whilst waiting for a job. No criminal offences have occurred in any of the locations the Council have had to deal

with to date. The main complaints have been low-level anti-social behaviour and predominately noise. However, the noise nuisance encountered in these locations falls short of the statutory level for enforcement.

Licence conditions

- 4.11 Voluntary 'conditions' and commitments can be set as part of the licensing process. Where late night refreshment (LNR) is offered (between the hours of 11pm and 5am), formal conditions can be applied to the Licensing Act 2003 premises licence. Conditions have been set on premises licences to define the type of vehicles that premises use such as cycles rather than motorised vehicles, such as mopeds. However, these conditions have been suggested by the applicant or by the Licensing Sub-Committee during a hearing. There is a risk that conditions restricting the vehicles that are used can be legally challenged via an appeal but no appeal has been made against the imposition of such conditions on a licence. Any conditions attached to premises licences for the delivery must relate to the licensing objectives.

5. Opportunities for improving our enforcement action

- 5.1 One of the key pieces of feedback from residents has been the perception that riders and drivers often congregate on residential streets at anti-social hours. This was validated in a recent interview in Time Out magazine with a Deliveroo rider who is quoted as saying: "If you see a gaggle of Deliveroo riders, you're in the middle of a district. Each area has a place that riders are allocated to sit while waiting for an order. It's in the most central part of that area and it'll literally be a random street. There'll usually be a small community of Deliveroo riders there waiting for a job."
- 5.2 We do not have powers to stop drivers and riders congregating and can only take action if it is causing anti-social behaviour or is immediately outside a premises from which there are activities that we license or grant planning permission.
- 5.3 The Licensing Committee is invited to give its views on how the learning from recent licensing applications could be applied to further improving enforcement action. For example:
- Are there other premises where there is evidence to introduce voluntary 'conditions' and commitments can be set as part of licensing process?
 - Could we learn from the recent Licensing Charter and work with the industry to implement a local accreditation scheme and voluntary code of practice?



City of Westminster

Licensing Committee Report

Date:	Wednesday 29 th November 2017
Classification:	For General Release
Title:	Licensing Policy Representation and Changes to Reports
Report of:	Director of Public Protection and Licensing
Wards Affected:	All
Financial Summary:	N/A
Report Author and Contact Details:	Mr David Sycamore, Licensing Team Manager. Tel: 020 7641 8556

1. Executive Summary

- 1.1 This paper highlights a number of operational changes that have taken place with regard to policy representations at Licensing Sub-Committee meetings and also contents of Licensing Sub-Committee reports.

2. Recommendation

- 2.1 That Members of the Committee note the contents of the report.

3. Reasons for Decision – Licensing Service Representation

- 3.1 Officers of the Licensing Service study the application and assess it against the Westminster Statement of Licensing Policy 2016. The Licensing Service has been able to upskill its officers to advise applicants at an earlier stage of any policy implications, which has resulted in a reduction in cases going to Sub-Committee meetings and the number of officers attending these meetings.

4. Reason for Decision – Report changes

- 4.1 The Council has received several complaints and comments over the past several years from residents whose information, namely their address, is available online in a public search from our website. After seeking advice from the Council Information Team, changes have been made and should remain in place. Premises plans will not be made available to the public, but will be

sent out as part of the report to all interested parties. Mention of the Council's responsibilities to consider protected groups will now be added to all reports.

5. Background – Licensing Authority Representations

- 5.1 Officers of the Licensing Service study the application and assess it against the Westminster Statement of Licensing Policy 2016. The Licensing Service has been able to upskill its officers to advise applicants at an earlier stage of any policy implications.
- 5.2 The Licensing Service now makes representations to applications as the Licensing Authority. This is enabling the Service to ensure that applicants focus on the Council's policy and specifically meet the requirements of those policies. This has had the effect of improving the applications that have been submitted and the operating schedule which forms part of that form. Some applicants, once receiving the Licensing Authority representation, have made amendments to their application whilst in the initial period of the consultation period to reduce the hours or activity which was contrary to policy so that they would meet the policy requirements. Other applications that were completely contrary to policy have in some cases been withdrawn by applicants because of the representations from the Licensing Authority.
- 5.3 This intervention has reduced the number of applications brought before Licensing Sub-Committee for determination. It should be noted that the Licensing Service receives over 6000 applications a year, of which approximately 160 applications require determination at Licensing Sub-Committee meetings.
- 5.4 Environmental Health Officers remain focused on Public Safety and Prevention of Public Nuisance licensing objectives so that by the time a case is presented to the Licensing Sub-Committee, as much agreement as possible has been achieved and a more complete application is to be considered with agreed conditions and amendments.
- 5.5 Previously several Environmental Health Officers would attend Sub-Committee meetings even when an application needed to be determined by the Licensing Sub-Committee due to it being against policy only.
- 5.6 Environmental Health Officers will maintain their representation where their concerns have remained with regards to Public Nuisance and Public Safety.
- 5.7 Members of the Sub-Committee can now often determine an application with far more information before them rather than late or new information being received at the Sub-Committee. This operational change is reducing the work of the Sub-Committee and number of officers attending the Sub-Committee meeting. One Senior Licensing Officer can attend the hearing per meeting and cover all cases listed that have policy implications.

5.8 Senior Licensing Officers are now upskilled and experienced in the use and implementation of the Policy and are able to provide advice to customers prior to submitting applications when dealing with queries.

6. Background information – Licensing Sub-Committee Reports

6.1 The Council has received several complaints and comments over the past several years from residents whose information, namely their address, is available online in a public online search. This is due to the name and address being published in reports which become public documents and then remain so. Members of the public have asked for this to be removed once the case has been determined. Currently all our committee reports remain published online.

6.2 To reduce the likelihood of this going forward and after taking advice from the Council Information Team, Committee Services have now amended the way Licensing Sub-Committee reports are published. Members and interested parties will have access to full details in their report bundles and plans but the publicly published versions will have the name and address of the objector or supporter redacted as well as the plans. This act has now dramatically reduced the risk to the Council.

6.3 Plans are available for people to inspect at our offices, but plans are not made publicly available on our website. This has been done after taking advice with regards to the current threat level. Having access to detailed plans of premises which show escape routes and fire exit as well as any emergency features can be used in a hostile manner.

6.4 Advice was taken from internal and external partners and it was felt the removal of plans from public display was an appropriate response.

6.5 The online published reports available to the public contain full details of the report, excluding objectors' names and address and the plans. The public are still able to attend the hearing and watch the full proceedings.

6.6 New legislation that will be enforceable in May 2018, the General Data Protection Regulation, will give people the 'right to erasure' meaning anyone can request deletion of personal data related to them. There are also other obligations on organisations that collect data and by adopting changes now we are already mitigating any potential risks.

6.7 The process of going back and redacting published data is an extra administrative burden that has now been removed from the service.

6.8 Mention of The Council's obligations in its capacity as the Licensing Authority, to have regard to its public sector equality duty under Section 149 of the Equality Act 2010, will now be set out in all Licensing Sub-Committee reports. This mitigates the risk to the Council if we cannot demonstrate we have considered these groups in any decisions taken.

6.9 In summary Section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

6.10 Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

If you have any queries about this report or wish to inspect any of the background papers, please contact:

David Sycamore – Licensing Team Manager
dsycamore@westminster.gov.uk



City of Westminster

Licensing Committee Report

Date:	Wednesday 29 th November 2017
Classification:	For General Release
Title:	Licensing Appeals
Report of:	Director of Law
Wards Affected:	All
Financial Summary:	N/A
Report Author and Contact Details:	Heidi Titcombe, Principal Solicitor for Shared Legal Services. Tel: 020 7361 2617 Email: heidi.titcombe@rbkc.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 Over the last quarter we have been dealing with the appeals against decisions of the Licensing Sub-Committee ("Committee") and the Hemmings case as specified in section 4 and 5 of this report.

4. Licensing Act 2003 Appeals

4.1 Sophisticats, 3 – 7 Brewer Street, London, W1F 0RD

4.1.1 Devine Restaurants Ltd ("Appellant") appealed against two decisions of the Committee made on 1st December 2016 and 6th April 2017, primarily against the Committee's decisions to refuse the extension of hours in relation to the Premises Licence granted under the Licensing Act 2003 and the renewal of the Sex Establishment Licence ("SEV") granted under the Local Government (Miscellaneous Provisions) Act 1982. Both appeals were conjoined and heard at Westminster Magistrates' Court on 27th and 30th June 2017, when the

District Judge concluded that both decisions of the Committee were not wrong, so the appeals were dismissed.

- 4.1.2 The Council sought recovery of its legal costs from the Appellant and at the costs hearing on 14th September 2017, the Appellant was ordered to pay £42,684 to the Council. These costs have yet to be received and the Council is endeavouring to recover these from the Appellant.

4.2 Crocker's Folly, 24 Aberdeen Place, London, NW8 8JR

- 4.2.1 This Premises is a public house and restaurant which has an outside seating area. On 24 January 2017, the Premises Licence Holder, (Firestone Management Ltd), sought permission to vary the licence by extending the hours for the use of the external outside area at the side and front of the premises from 21:00 hours to 23:00 hours each day. The application was opposed by Environmental Health, two Ward Councillors and 15 local residents.
- 4.2.2 The Committee refused the application on 27 April 2017 on the grounds that the variations would not promote the prevention of public nuisance licensing objective.
- 4.2.3 The appeal was scheduled to be heard at Westminster Magistrates' Court over three days from 4th to 6th October 2017. However, on 10th August the Appellant withdrew its the appeal. The Council sought to recover its costs from the Appellant and at the costs hearing on 11th October 2017, the Appellant was ordered to pay £15,180 to the Council. These costs are being pursued.

4.3 London Film Museum, 45 Wellington Street, WC2E 7BN

- 4.3.1 An application was received on 21 April 2017 to extend the hours for licensable activities to 02:00 in a marked area within the Premises so that the area could be used for private and pre-booked events. The existing permitted hours of the licence has a terminal hour on Mondays to Saturdays of 00:30 and 22:00 hours on Sundays. The proposal was to extend the terminal hour Mondays to Saturdays to 02:00 and to the same terminal hour on any Sunday before a bank holiday. It was intended that the Premises would close 30 minutes after the proposed new terminal hours.
- 4.3.2 The Police and the Licensing Authority objected to the variations sought and on 6th July 2017 the Committee decided to refuse the application primarily on the basis that firstly, the proposal would be contrary to the Council's Cumulative Impact Area Policy and secondly, because the Applicant had not demonstrated why the application should be granted as an exception to this policy.
- 4.3.3 The appeal was scheduled to be heard over two days on 25 and 26 January 2018. However, the Appellants have now withdrawn the appeal and the

Council will be seeking to recover its legal costs.

4.4 **Swingers, 15 John Prince's Street, W1**

4.4.1 The Court has advised that an appeal has been received and it is being processed by the Court. No details of the grounds of appeal have been provided so Members will be updated at the next Licensing Committee.

5. **JUDICIAL REVIEWS / CASE STATED**

5.1 **Hemming and others v Westminster City Council**

5.2 This is a claim brought by the proprietors of a number of sex establishments in Soho alleging that the fees charged by Westminster on an application for a sex shop licence are unlawful.
The history of and background of this case has been set out in previous reports to the Committee.

5.3 The case has now returned to the Supreme Court for final decisions to be made following the earlier decisions in the Supreme Court and the European Court of Justice ("CJEU"). There are two issues remaining, namely:-

(1) obtaining an assessment as to what costs should be paid by Hemmings and the other Operators in light of the previous decisions that enforcement and monitoring costs can be recovered; and

(2) obtaining an order that the Council should recover its legal costs in connection with the hearing before the Supreme Court and the CJEU.

5.4 The Council has filed draft skeletons of arguments and draft orders with the Supreme Court so that these matters can be remitted to the Administration Court for determination and it is estimated that these matters will be resolved some time in 2018.

5.5 By way of background, the Council's licensing fees were calculated on the basis that the regime was supposed to be self-financing, so that the administrative costs of processing and granting licenses should be recovered, together with the costs of monitoring and enforcing the entire licensing regime against unlicensed and licensed operators. Hemmings and a number of other licence operators objected to the fees charged by Westminster for various reasons, but one of the main reasons was that they contended that Westminster could not recover the costs of monitoring and enforcement, as they argued that this would be contrary to the Service Provision Regulations which came into force in 2009 and the European Union Services Directive. The High Court and the Court of Appeal had both previously held that the European Directive prevented Westminster from recovering the fees for monitoring and enforcing the licensing regime as part of the licence fee.

5.6 However, Westminster appealed to the Supreme Court which held in 2015 that authorities were entitled to charge a fee towards the costs of monitoring

and enforcing the licensing regime. However, the Supreme Court had a concern about the impact of the Services Directive on the timing of when such charges could be demanded. The Supreme Court was clear that schemes of Type A (whereby the licensee paid a fee to cover the administration of the licence application at the time when that application was made, and a further fee to cover the monitoring and enforcement of the regime only if the application was successful) were lawful. However, it referred to the Court of Justice of the European Union the question of the lawfulness of schemes of Type B (where both the fee for the administration of the licence application and a refundable fee for the monitoring and enforcement costs of the licensing regime were charged at the time when the application was made). Westminster had previously charged one fee when the application was made under a Type B process. Subsequently, on 16 November 2016 the CJEU held that Type B schemes were unlawful as a matter of European Union law. The Council had subsequently converted to a Type A scheme.

5.7 At the latest and final hearing before the Supreme Court on 11 May 2017, Westminster sought various orders which included orders for the repayment of the sum of £1,417,245 (which had been returned to the Operators following the decision of the Court of Appeal.) However, Hemming and the other Operators argued that, in light of the CJEU's finding, that the Type B scheme, which Westminster had used, was unlawful, that the Council should not be entitled to a refund for the licence fees repaid.

5.8 On 19 July 2017 the Supreme Court decided decisively in favour of Westminster that the Council could recover a reasonable fee for the monitoring and enforcement of the sex licensing regime in Westminster (including the costs of enforcement measures against unlicensed operators). Consequently, the Council is seeking recovery of all sums repaid, in addition to a reasonable sum for the monitoring and enforcement of the licensing regime for the periods in question (i.e. for the years ending 2011, 2012 and 2013).

6. Legal implications

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

7. Staffing implications

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

8. Business plan implications

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

9. Ward Member comments

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

10. Reason for decision

10.1 The report is for noting.

If you have any queries about this report or wish to inspect any of the background papers please contact Heidi Titcombe, Principal Solicitor on 020 7361 2617; email: heidi.titcombe@rbkc.gov.uk

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