



City of Westminster

Title:

Licensing Committee

Meeting Date:

Wednesday 22nd March, 2023

Time:

6.30 pm

Venue:

Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP

Members:

Councillors:

Aziz Toki (Chair)	Laila Cunningham
Maggie Carman (Vice-Chair)	Robert Eagleton
Concia Albert	Iman Less
Melvyn Caplan	Tim Mitchell
Jim Glen	Angela Piddock
Louise Hyams	Caroline Sargent
Jacqui Wilkinson	Judith Southern
Md Shamsed Chowdhury	



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

Admission to the public gallery is via a visitor's pass which is available from the main ground floor reception at City Hall, 64 Voctoria Street. If you have a disability and require any special assistance please contact the Committee Officer (details listed below) in advance of the meeting..

If you require any further information, please contact the Committee Officer, Tristan Fieldsend, Senior Committee and Councillor Liaison Officer.

**Email: tfieldsend@westminster.gov.uk
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 2, 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. MEMBERSHIP

To report any changes to the membership

2. DECLARATION OF INTEREST

To receive declarations by Members and Officers of the existence and nature of any pecuniary interests or any other significant interest in matters on this agenda.

3. MINUTES

To sign the minutes of the previous meeting held on Wednesday 23 November 2022.

(Pages 3 - 6)

4. THE PERFORMANCE OF THE LICENSING SERVICE

(Pages 7 - 14)

5. UPDATE OF LICENSING APPEALS

(Pages 15 - 20)

6. ANY OTHER BUSINESS

Stuart Love
Chief Executive
14 March 2023



CITY OF WESTMINSTER

MINUTES

Licensing Committee

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Committee** held on **Wednesday 23rd November, 2022**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Aziz Toki (Chair), Maggie Carman (Vice-Chair), Melvyn Caplan, Md Shamsed Chowdhury, Robert Eagleton, Jim Glen, Tim Mitchell, Angela Piddock, Caroline Sargent, Judith Southern and Jacqui Wilkinson

1 MEMBERSHIP

- 1.1 Apologies were received from Councillors Concia Albert, Laila Cunningham, Louise Hyams and Iman Less.

2 DECLARATION OF INTEREST

- 2.1 There were no declarations of interest.

3 MINUTES

3.1 RESOLVED:

That the minutes of the Licensing Committee meeting held on Monday 25 July 2022 were signed as a correct record of proceedings.

4 APPOINTMENT OF LICENSING SUB-COMMITTEE CHAIR

4.1 RESOLVED:

That Councillor Angela Piddock be elected a Licensing Sub-Committee Chair.

5 LICENSING SERVICE FEE REVIEW 2022-2023

- 5.1 The Head of Service for Licensing and Regulatory Services introduced a report setting out the fee review that had been undertaken by the Licensing Service for all licensing regimes where the council could set a fee. It was explained that the proposed amended fees would enable the Council to recover its reasonable costs for administering, monitoring, and enforcing the Council's licensing regimes.
- 5.2 Members were informed that when setting fees there was a statutory requirement to consider the income received for a licensing scheme compared to the overall cost of delivering the scheme. The Committee noted that the fee level must be set to recover the actual costs incurred by the Council in running the regime but not to make a profit.
- 5.3 The Committee considered how some of the proposed fee increases were quite considerable. In response it was explained that the fees for processing each type of application were estimated by assessing the time it took for each step in the process from receipt of application to determination. This included the time taken by internal consultees, such as the Environmental Health Consultation Team and Registrars.
- 5.4 With regard to isolated pitch fees and exhibition charges the Committee was interested to learn they were last reviewed in June 2006. A review of these fees had been scheduled but due to the pandemic this had been delayed. The Committee was pleased to note that the review of these fees would commence shortly and a paper on these fees and charges would be coming to a future Committee meeting.

5.5 RESOLVED:

That the proposed fees attached to the report be approved so that they commence on the 1 April 2023.

6 UPDATE ON LICENSING APPEALS

- 6.1 The Committee received a report from the Principal Licensing and Highways Solicitor, which provided a summary of recent appeal results. The Committee noted the summary which included details of the six appeals that Legal Services had been dealing with since July 2022, two of which had now been withdrawn, one settled and three were pending determination. The Committee was informed that further details of the outcomes of these would be provided once the appeals had progressed.
- 6.2 The Committee expressed its thanks to Legal Services for its work on appeals and the excellent advice they provided to Committee members.

6.3 RESOLVED:

That the report be noted.

7 ANY OTHER BUSINESS

- 7.1 Following a recent case heard by a Licensing Sub-Committee the Committee was interested to learn how the Council monitored licensing breaches. A detailed explanation was provided on the process and the reasons why in that particular instance the breach had not been identified sooner. The Committee was pleased to note that going forward it was intended to use a new IT system which would highlight such instances and prevent these types of breaches. In the short term though everything was being reviewed to try and identify any other Premises which may be breaching conditions. An update on the performance of the licensing service would be provided at an upcoming meeting.
- 7.2 The Committee also discussed and agreed moving the start time of future meetings to 6.30pm.

The Meeting ended at 7pm.

CHAIRMAN: _____

DATE _____

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City of Westminster

Licensing Committee Report

Date of Committee:	22 March 2023
Classification:	General Release
Title of Report:	The Performance of the Licensing Service
Wards Affected:	All
Decision Maker:	For information
Financial Summary:	None
Report's author:	Mr Andrew Ralph – Head of Licensing & Regulatory Services

1. Introduction

- 1.1 This report sets out an overview of the Licensing Service during the last financial year compared to the year before. The report sets out the type of regimes and applications covered by the Licensing Service, team performance, significant trends and high-profile applications.

2. Recommendation

- 2.1 That the Committee notes the report.

3. Licensing Regimes

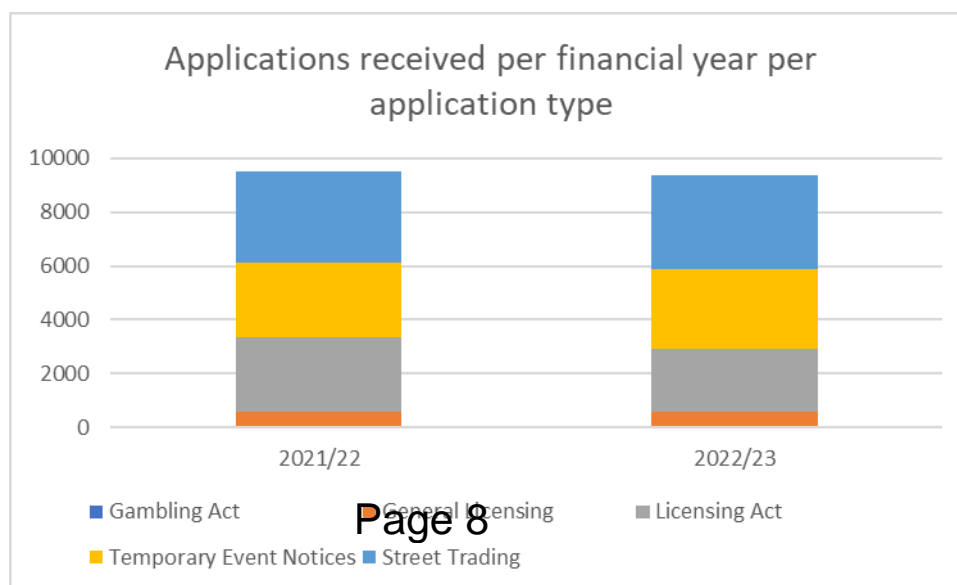
- 3.1 The Licensing Service deals with applications received over approximately 25 different licensing regimes. Most applications received by the Licensing Service are governed by the Licensing Act 2003, including temporary event notices, new premises licence applications and applications to transfer the premises licence holder. Other legislation is frequently utilised by the Licensing Service covering the broad and vast range of licence applications it deals with, namely:

- Gambling Act 2005: including casinos and betting shops.

- London Local Authorities Act 1991/2000: including massage and special treatment premises.
- Zoo Licensing Act 1981 and The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018: including ZSL London Zoo and regulating other animal regimes such as dog boarding establishments, performing animals and pet shops.
- The Marriage and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011
- City of Westminster Act 1999: regulating street trading applications and activity, including the designation of pitches in Westminster's markets, as well as isolated pitches where street trading is permitted.
- Business and Planning Act 2020: Permits local authorities to authorise the premises to place tables, chairs and other furniture on the public highway without the requirement for planning permission. Legislation that was created in response to the pandemic.
- Local Government (Miscellaneous Provisions) Act 1982: regulating the licensing of sex establishments, sex shops and sexual entertainment venues.

4. Applications received by the Licensing Service

- 4.1 Typically, the Licensing Service has been receiving over 8000 applications per year. However, over the last two financial years there has been a slight upward shift in the trend as the Licensing Service has received over 9000 applications in both years.
- 4.2 The number of applications received this financial year are analogous to last year's figures with 9506 and 9363 applications received.
- 4.3 The graph below shows the number of applications received per financial year per application type for the years 2021/2022 and 2022/2023.



- 4.4 For the purposes of this report, General Licensing includes applications for massage and special treatment premises, sexual entertainment venues, explosives, auctions and film classifications.
- 4.5 The table below shows the actual number of applications received per financial year supporting the information provided in the graph above.

Financial Year	Total Number of Applications Received	Application Types				
		Gambling Act	General Licensing	Licensing Act 2003	Temporary Event Notice	Street Trading
2021/22	9506	43	535	2773	2774	3381
2022/23	9363	29	538	2372	2954	3470

Pavement Licences and Tables and Chairs Licences

- 4.6 In July 2020, the Business and Planning Act 2020 was introduced by the Government. The Act introduced a new 'pavement licence' scheme so that operators of businesses selling food and drink could apply to their local authority for authorisation to put removable furniture such as tables and chairs on the highway in front of or adjacent to their premises so that their customers could eat and drink outside their premises to aide social distancing. In Westminster, these licences are renewed every six months. They have now taken over from the old Tables & Chairs Licence under the City of Westminster Act 1999.
- 4.7 Changes in leadership in central government caused a delay in the consideration of the Levelling Up and Regeneration Bill which will make pavement licensing the permanent licensing regime for alfresco dining and the placement of furniture on the highway. This Bill is now in the Committee Stage in the House of Lords and it is hoped that this will receive Royal Assent by the Autumn of 2023. The Business & Planning Act is currently scheduled to expire on 30 September 2023.

5 Team Performance

- 5.1 The Licensing Service has an internal key performance indicator of processing applications within 2 working days of receipt. Over the last 2 financial years, more than 97% of applications were processed within this deadline.

- 5.2 The table below shows the total number of applications received by the Licensing Service year on year, as well as the number of those applications that were processed within 2 days of receipt.

Financial Year	Total Number of Applications Received	Number of Applications Processed Within 2 Days of Receipt	Percentage of Applications Processed Within 2 days of Receipt
2021/2022	9506	9221	97%
2022/2023	9363	9081	97%

- 5.3 At the time of publishing this report the current financial year had not come to an end and therefore by looking at the trend over the last financial year it is predicted that the service will receive a further 700 applications. This will then surpass last years figures and so the Licensing Service is encouraged by its ability to maintain its performance of processing at 97%. This is also very positive given the operation of the Licensing Service had a decrease in staffing levels.
- 5.4 Furthermore, in order to ensure the continual provision of a high level of customer service and satisfaction, the Licensing Service also focuses on ensuring effective consultation on all applications received and determining applications within its legislative deadlines.
- 5.5 To support the above, the Licensing Service has improved its focus on issuing licences within our internal deadlines of 14 and 28 days, depending on the type of licence regime and application. The Licensing Service has embedded a change in mindset of the team by outlining the importance of issuing licences. As a result, there has been an improvement in the percentage of licences issued within the deadline set.

Role of the Licensing Authority

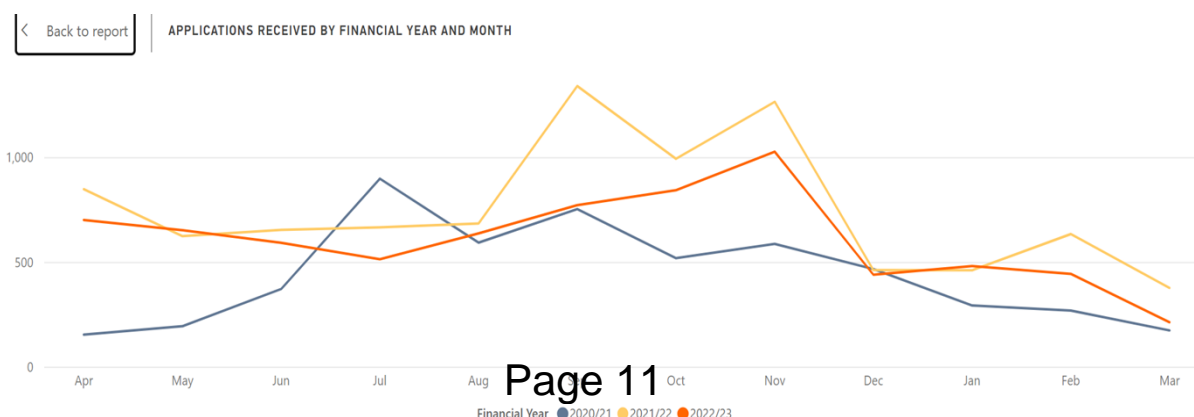
- 5.6 The Licensing Authority takes an important role throughout the consultation of applications; specifically, those for new and variations of premises licences for premises located within the cumulative impact areas and contrary to the Council's Statement of Licensing Policy. In 2022/2023, the Licensing Authority raised over 100 representations to these applications.
- 5.7 Given the percentage increase of applications received by the Licensing Service year on year, it is predicted that there will also be a correlated increase in the number of representations raised by the Licensing Authority.
- 5.8 The role in raising representations in accordance with the policy enhances the awareness and expertise of Senior Licensing Officers in regard to the locality, operation and management of licensed premises within Westminster. It also develops the internal and external profile of the officers involved and allows

for further communication with applicants, local residents and other interested parties.

- 5.9 The Service continued its mediation service over the last year, recognising that through liaising with applicants and interested parties, a number of applications could be dealt with through delegated authority rather than needing to be scheduled at a Licensing Sub-Committee. This is resource intensive for the Licensing Service, but results in a reduced number of cases going to Sub-Committees, therefore reducing the cost and speeding up the process for these applicants. Feedback from interested parties and applicants continues to be extremely positive and the Service will be continuing to push forward with this in the future.
- 5.10 During the pandemic the Licensing Sub Committees were virtually, and this had a significant impact on the number of cases that could be listed at each committee. This resulted in a backlog of cases which caused issues for not only the operators who were trying to open during difficult times, but also put a strain on resources for the Service trying to get back on track after the restrictions were lifted. With the support of the Chair of Licensing and the Committee Members and working with colleagues in Committee Services and Legal, the backlog has been cleared and the Service is back to meeting statutory timeframes and determining cases at LSC within the required periods.
- 5.11 Officers within the Street Trading Team have expanded their role by working collaboratively with the market development team to enhance the market offering in the city. This has encouraged and supported traders back to the markets since the pandemic. In efforts to encourage traders to feel more included as part of the Community, the team now arrange to meet new traders on their first day of trading to introduce them to the area City Inspector and show them where they are expected to trade and answer any questions that they have. The team has also visited the various markets and have spent time in Church Street meeting with traders to help support any questions or queries around casual booking or finance.

6 Licensing application trends

- 6.1 The Licensing Service receives applications on a consistent trend year on year. The graph below indicates the number of applications received each month for the years 2021/2022 and the current number of applications received this financial year 2022/2023.



- 6.2 Just like previous years before the pandemic the Licensing Service expect a high volume of applications are received in the months of October and November, which is reflective of temporary event notices applied to take place in the month of December and January for Christmas and New Year events. In the build up to Christmas and New Year 2022 the Licensing Service received over 1100 Temporary Event Notice applications.

7 Trends and Projects

New IT

- 7.1 The Street Trading team continue to work with Farthest Gate Limited on the design and implementation of new licensing software, Liberator. Recent developments include the creation of an entirely new online booking system for casual trading. This is a bespoke design for Westminster City Council that allows casual traders to book their own casual pitches and manage their own accounts.
- 7.2 The team are progressing into Phase 2 where the remaining licensing types for Street Trading Events, Loudspeaker consents and Leicester Square portrait artists will be moved onto the new system. Part of this phase of the design is to integrate finance onto Liberator which will allow the customer to have access to their invoices and payments. This will also negate current practice of a manual invoice upload. It is expected that Liberator will be rolled out to Premises Licensing at a date to be determined in 2023.

Debt Collection Street Trading

- 7.3 The Senior Licensing Officers continue to meet with traders to keep on top of their street trading accounts. Where traders have fallen behind with their invoice payments, the team support them to clear their debts in the shortest, most manageable way. This is through telephone consultations and face to face surgeries to arrange payment plans, to discuss reducing days of trading as well reducing trading to one pitch rather than two.
- 7.4 Where this mediation is unsuccessful, the licensed trader is referred to Licensing Officer Panel, and this year 12 licences have been revoked for failing to pay fees associated with their street trading account and failing to make full personal use of their street trading licences.

De-designation and variation of designation for Isolated Pitches

- 7.5 During the last 12 months, the Street Trading team has recommended the rescinding of the designation of 3 isolated pitch traders in the Oxford Street area. These were instigated by the traders and their representative body, WESTA. The council is supportive of such requests when received as they

are in line with MR1.6 of the City Council's Mayfair Neighbourhood Plan 2018-2038 which specifies that "Stand alone retail "huts" such as exist in the side streets along Oxford Street are not supported and opportunities to remove or relocate them should be taken." It is anticipated that further requests are likely to be received in future.

Annual Fee Retrieval Licensing Act 2003 and Data Cleansing

- 7.5 Historically, there are a number of licensed premises that have not paid their annual fees. Therefore, the Premises Licensing Team have continued collecting historic debt for unpaid annual fees. In addition to chasing the fees the team has also been able to data cleanse the files and ensure that information held is accurate in readiness for the new IT system. There have been a number of premises licences suspended as part of the process.

8 Westminster Responsible Authorities Group

- 8.1 The Westminster Responsible Authorities Group (WRAG) is a fortnightly meeting attended by representatives of the responsible authorities (e.g., Environmental Health, Metropolitan Police, Licensing Authority, City Inspectors from all areas, and the Home Office) and chaired by the Licensing Service. Its purpose is to identify applications or premises of concern and develop a collaborative approach between the authorities.
- 8.2 The discussion focuses on any high profile or high-risk premises which may have applications scheduled for Licensing Sub-Committee, are proposing changes which may attract interest from relevant parties or have come to the attention of the Licensing Service by way of concern.
- 8.3 The WRAG is used as a platform to create a single point of contact between the area-based City Inspector teams and the Licensing Service. This allows for effective and efficient communication of information on high profile and problematic premises within Westminster.

9. High Profile cases and Events

9.1 Kings Coronation

The Licensing Service are currently dealing with two applications for licences to support the weekend of celebrations for His Majesty The Kings coronation from 6th May through to 7th May. This an exciting opportunity for the team to work with a variety of stakeholders including the Department for Culture, Media and Sport (DCMS), Environmental Health and the Police. A Premises Licence has been applied for by DCMS to cover licensable activities to take place in two locations, Hyde Park and the Mall and Horse Guards Parade. Provision is made within each application for facilities to enable the sale of alcohol within the areas covered by the licences, as well the full range of regulated entertainment to facilitate the celebrations and covering a range of planned events. It is anticipated that it will be an amazing weekend of celebrations, with the Licensing Service playing a pivotal role in ensuring all

the relevant and necessary licences are in place for the events to run smoothly and successfully.

London Zoo

- 9.2 London Zoo is the world's oldest scientific zoo. With over 1.2 million visitors a year, ZSL London Zoo is one of the Licensing Service's most high-profile venues. Licensed under the Zoo Act 1981, London Zoo also has the benefit of a premises licence, an explosive licence for its marine flares and flash bangs and is an approved premises for marriage and civil partnerships. The Licensing Service receives numerous Freedom of Information requests in relation to the zoo and has a stringent inspection regime under the Zoo Act 1981 which requires annual inspections.

Notting Hill Carnival

- 9.3 In 2022, Notting Hill Carnival returned to the streets of Westminster. The Council supports carnival by allocating temporary street trading pitches on two street in the west of the city, Westbourne Park Road and Talbot Road. In total, there are 43 pitches available for the two days of carnival. The majority of these pitches provide hot food and the window for applications for this year's carnival opens in April.

- 9.4 RSPCA Paw Print Awards.

Once again, the Service has been successful in obtaining a silver award for its animal licencing regimes. This relates to the management of animal welfare.

10. Financial Implications

- 101 There are no financial implications from this report.

11. Legal Implications

- 11.1 The legal implications are contained within the body of this report.

12. Equality Implications

- 12.1 S.149 of the Equality Act 2010 places a duty on local authorities to have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity between people who share a protected characteristic and to encourage good relations between those who share a protected characteristic and those who do not. The Council has had due regard to this duty when receiving, processing determining and issuing licences.

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

Mr Andrew Ralph – Head of Licensing and Regulatory Services



City of Westminster

Licensing Committee Report

Date of Committee:	22 March 2023
Classification:	General Release
Title of Report:	Update of Licensing Appeals
Wards Affected:	All
Decision Maker:	For information
Financial Summary:	None
Report's author:	Ms Heidi Titcombe Principal Solicitor (Licensing and Highways Legal Team) Heidi.Titcombe@rbkc.gov.uk For the Director of Law and Governance

1.1. Introduction

- 1.1 This report provides a summary of recent appeal results.

2. Recommendations

- 2.1 That the report be noted.

3. Reasons for Noting

- 3.1 To be aware of the current appeals being received and their outcome.

4. Background

- 4.1 Legal Services has been dealing with four appeals since November 2022, two of which have been withdrawn, one cannot be pursued and one is pending determination, as specified in section 5 below.
- 4.2 To date, 486 appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 485 of these appeals have been heard / settled / withdrawn, leaving one to be

determined as shown below:

- ☐ 1 pending
- ☐ 59 dismissed
- ☐ 16 allowed
- ☐ 13 allowed only in part
- ☐ 167 settled
- ☐ 229 withdrawn
- ☐ 1 out of time

5. **Appeals**

5.1 **16 Charles Street, London W1J 5DR – withdrawn**

5.2 16SC Operations Ltd applied for the grant of a new premises licence for a fine dining restaurant until 23:30 on Mondays to Thursdays, until midnight on Fridays and Saturdays and until 22:30 on Sundays. The premises is not in a cumulative impact area, so the application was in accordance with policy.

5.3 The Police, Environmental Health, and 27 local residents along with the Rosebery Mayfair Resident Association Limited (RMRAL) and Balfour Property Investments (BVI) Ltd (BPIL) objected to the application on the grounds that the premises would undermine the licensing objectives. The Police withdrew their objection after agreeing certain conditions with the Applicant.

5.4 The Sub-Committee granted the licence on 18 November 2021, subject to a number of conditions, but did not impose ten of the conditions requested by Rosebery Mayfair Resident Association Limited and Balfour Property Investments because the Committee considered they were not appropriate or proportionate.

5.5 RMRAL and BPIL appealed the Decision on the grounds that their conditions, agreed with the Applicant should automatically be attached to the licence. The Case Management hearing took place on 16 November 2022, when the Court listed the appeal for hearing at the City of London Magistrates' Court for one day on 27 April 2023. However, on the 2 March 2023 the Appellants withdrew their appeal on the basis that the Premises Licence Holder had agreed to attach four out of the original ten conditions to the licence by way of a minor variation application.

5.6 Any claim for costs would be apportioned between RMRAL and BPIL. The appeal has therefore been withdrawn on the basis that each party bears their own costs.

5.7 **Old Brewer's Yard, 5 Langley Street, London, WC2H 9JA – withdrawn**

5.8 Diageo Great Britain Ltd appealed to Westminster Magistrates Court against a decision of the Council's Licensing Sub-Committee on 30th June 2022 to grant

a Premises Licence at The Old Brewer's Yard and the Basement at 5 Langley Street London WC2H 9JA, subject to a condition that the sale of alcohol in the Brewer's Courtyard should terminate at 21.00 every day.

5.9 There were a number of objectors to the application, including the Metropolitan Police, Environmental Health, the Licensing Authority, as well as some residential objections on the grounds that extending the hours in the outside area to 22:30, with 23:00 hours closing, would undermine the licensing objectives.

5.10 This appeal was due to be heard at the City of London Magistrates' Court over three days commencing on 5th June 2023. However, the appeal was withdrawn, and the Appellant agreed to pay the Council's Legal costs of £3,720. These costs were received on 21 February 2023.

5.11 During the appeal process the Appellant submitted another application for a new premises licence restricting the hours for the use of the basement of the Premises to core hours and reducing the overall capacity which was granted on 24 November 2022.

5.12 Greggs, 1-4 Leicester Square, London, WC2H 7NA – pending

5.13 Greggs PLC applied for a premises licence to permit the late-night sale of hot food and drinks from 23:00 hours to 05:00 hours the following day, seven days a week in the heart of Leicester Square. The application was opposed by the Metropolitan Police, Environmental Health, the Licensing Authority, three local Ward Councillors and one resident. On the 29 July 2022, the Sub-Committee refused to grant the application on policy grounds stating that the Appellant had failed to demonstrate exceptional reasons as to why the application would not have a negative impact on the West End Cumulative Impact Zone and promote the licensing objectives. Greggs would need to try to convince the court that their evidence provides exceptional reasons for allowing the Premises to operate until 05:00 hours, despite being located in a cumulative impact zone.

5.14 The Case Management Hearing took place on the 5 December 2022 when the appeal was listed for hearing on 16, 17 and 18 May 2023 at Westminster Magistrates' Court. We are awaiting service of the Appellant's evidence. Members will be updated about the case in due course.

5.15 Shawarma N More Limited, 123 Baker Street, London, W1U unable to pursue

5.16 On 1 December 2022 the Licensing Sub-Committee refused an application to vary the licence by extending the hours for late night refreshment (Indoors and Outdoors) from 23:00 to 03:00 hours, with opening hours from 10:00 to 03:00 hours Monday to Sunday. If the Applicant had wanted to challenge the Decision they should have had to file an appeal in the Magistrates' Court within

21 days of the Decision being received. No appeal was made to the Magistrates' Court.

5.17 On 10 February 2023, the Applicant's Legal Advisers sent a Pre-Action Protocol letter to the Council advising that they were proposing to judicially review the Decision if the Council refused to reconsider the Decision.

5.18 On 3 March 2023 the Council rejected the claim on two grounds, firstly, that a claim for judicial review "should only be used where no adequate alternative remedy exists such as a right of appeal". As the Applicant had a right of appeal, which they had failed to exercise, they were not able to bring a claim for judicial review. Secondly, they were now out of time to issue an appeal in the Magistrates' Court.

6. JUDICIAL REVIEWS

6.1 Hemming and others v Westminster City Council

6.2 Members will be aware that Hemming and a number of other proprietors of sex establishments in Soho have challenged the fees charged by Westminster for sex shop licences. They have alleged that the Council was only entitled to recover the administrative costs of processing the application when assessing the licence fee, and not the costs of monitoring and enforcing the whole licensing regime against unlicensed and licensed operators.

6.3 The High Court and the Court of Appeal both held that the European Directive prevented Westminster from recovering the fees for monitoring and enforcing the licensing regime, against licensed and unlicensed operators. Westminster was therefore ordered to repay this element of the fees which related to monitoring and enforcement costs.

6.4 Westminster appealed to the Supreme Court who decided after various hearings on 19 July 2017 that Westminster could recover a reasonable fee for the monitoring and enforcement of the sex licensing regime in Westminster (including the costs of enforcement against unlicensed operators) and this element needs to be determined by the Court.

6.5 The Administrative Court gave directions to resolve the remaining issues on 13 December 2022. This required the Operators of the licensed premises to apply for permission to rely on certain grounds (in accordance with the Order of the Supreme Court). No application has been made to date. Another directions hearing has been scheduled to take place on the 10 May 2023 where further directions will be given

7. Financial Implications

- 7.1 Financial implications should be completed by the relevant Finance officer.

8. Legal Implications

- 8.1 Any applicant making an application under the Licensing Act 2003 and any other party who has made a representation, is entitled to appeal a decision of the Licensing Sub-Committee provided they apply to the Magistrates' Court within 21 days of the full licensing decision being issued. Such an appeal takes the form of a complete rehearing of the case, where new witnesses can be called and often such an appeal lasts many days. A Magistrate's Court has the power to grant or dismiss the appeal or to remit the case back to the Licensing Sub-Committee for reconsideration.
- 8.2 A Magistrates' Court has the power to make any order it considers appropriate in terms of legal costs. If the Committee provides a fully reasoned decision of the application, the onus is on the Appellant to prove that the Sub-Committee's decision was wrong.

9. Carbon Impact

- 9.1 It is believed that there is no carbon impact as a result of this report as this relates to appeals and judicial proceedings.

10. Consultation

Ward Councillors have not been consulted as the determination of licensing applications is a statutory function and the Council is an automatic party if an applicant or other party decides to appeal the decision of the Licensing Sub-Committee.

11. Equalities Implications

- 11.1 The Council must have due regard to its public sector equality duty under Section 149 of the Equality Act 2010. 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.

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

11.3 The Council believes there are no direct equalities implications arising from this report.

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

Ms Heidi Titcombe, Principal Solicitor at 07739 314073 or by email at email:
heidi.titcombe@rbkc.gov.uk