



City of Westminster

Committee Agenda

Title: **Licensing Committee**

Meeting Date: **Monday 17th July, 2023**

Time: **6.30 pm**

Venue: **Rooms 18.01 & 18.03, 18th Floor, 64 Victoria Street, London, SW1E 6QP**

Members: **Councillors:**

Aziz Toki (Chair)	Robert Eagleton
Maggie Carman (Vice-Chair)	Iman Less
Concia Albert	Tim Mitchell
Melvyn Caplan	Angela Piddock
Jim Glen	Caroline Sargent
Louise Hyams	Judith Southern
Jacqui Wilkinson	Karen Scarborough
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 Victoria 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 22 March 2023.

(Pages 3 - 6)

4. UPDATE ON LICENSING POLICY WORK PLAN

(Pages 7 - 14)

5. UPDATE OF LICENSING APPEALS

(Pages 15 - 20)

6. ANY OTHER BUSINESS

**Stuart Love
Chief Executive
7 July 2023**



CITY OF WESTMINSTER

MINUTES

Licensing Committee

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Committee** held on **Wednesday 22nd March, 2023**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

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

1 MEMBERSHIP

- 1.1 Apologies were received from Councillors Laila Cunningham, Louise Hyams and Caroline Sargent.

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 Wednesday 23 November 2022 were signed as a correct record of proceedings.

4 THE PERFORMANCE OF THE LICENSING SERVICE

- 4.1 The Head of Service for Licensing and Regulatory Services introduced a report setting out an overview of the performance of the Licensing Service and detailing how over the last two financial years there had been a slight upward shift in the number of applications received. It was explained how the numbers this financial year were comparable to last year's figures with 9506 and 9363 applications received respectively.

4.2 The Committee heard about the types of regimes and applications handled by the Licensing Service, team performance, significant trends and high-profile events such as the King's Coronation.

4.3 The Committee discussed:

- Pavement Licences and Tables and Chairs Licences – Members were interested to learn how changes in leadership in central government had caused a delay in the consideration of the Levelling Up and Regeneration Bill which would make pavement licensing the permanent licensing regime for alfresco dining and the placement of furniture on the highway. The Committee was informed that the Bill was now at the Committee Stage in the House of Lords and it was hoped that this would receive Royal Assent by the Autumn of 2023. The Business & Planning Act was currently scheduled to expire on 30 September 2023.
- Team Performance - The Licensing Service had an internal key performance indicator of processing applications within 2 working days of receipt. The Committee was pleased to note that over the last 2 financial years, more than 97% of applications had been processed within this deadline.
- RSPCA Paw Print Awards – Members also expressed their congratulations to the service for once again being successful in obtaining a silver award for its animal licensing regimes, which related to the management of animal welfare.
- Licensing Applications Backlog – Members were keen to learn more about the status of the backlog in applications and was informed that there had been a backlog due to the pandemic which had caused a significant impact on the number of cases that could be listed at each Sub-Committee meeting. It was explained that the backlog of cases had 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. Thankfully, with the support of the Chair of Licensing and the Committee Members and working with colleagues in Committee Services and Legal, the backlog had been cleared and the Service was back to meeting statutory timeframes and determining cases at Sub-Committees within the required periods.
- New IT – The Committee was interested to learn that the Street Trading team continued to work with Farthest Gate Limited on the design and implementation of new licensing software, Liberator. Recent developments were detailed including the creation of an entirely new online booking system for casual trading. This was a bespoke design for Westminster City Council that allowed casual traders to book their own casual pitches and manage their own accounts.

4.4 The Committee congratulated the Licensing Service on maintaining its high performance and in clearing the backlog of licensing cases.

4.5 **RESOLVED:** That the report be noted.

5 UPDATE OF LICENSING APPEALS

5.1 The Committee received a report from the Principal Licensing Solicitor which provided a summary of the status of the appeals being dealt with. The Committee noted the summary which included details of the four appeals that Legal Services had been dealing with since November 2022, two of which have been withdrawn, one which could not be pursued and one which was pending determination.

5.2 The Committee heard that the pending appeal was regarding Greggs PLC who had applied for a premises licence to permit the late-night supply 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. It was explained that the Sub-Committee had 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 the promotion of the licensing objectives. The Committee noted that further details of the outcome of this appeal would be provided once it had been dealt with.

5.3 **RESOLVED:** That the report be noted. The Committee thanked Legal Officers for all their work in dealing with the appeals.

6 ANY OTHER BUSINESS

6.1 The Chair requested that the Committee receive an update at its next meeting regarding the progress of any amendments to licensing policies.

The Meeting ended at 7.02pm.

CHAIRMAN: _____

DATE _____

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Licensing Committee Report

Date	06 July 2023
Classification	For General Release
Title or report	Update on Licensing Policy Work Plan
Report of	Director of Policy and Projects
Decision maker	Licensing Committee
Wards involved	All
Financial summary	None
Report author and telephone	Mr Kerry Simpkin, Head of Licensing, Place and Investment Policy. Email: ksimpkin@westminster.gov.uk

1. Executive Summary

- 1.1 This report has been provided following a request from the Licensing Committee for an update on the current work plan and timeline for licensing policy development and delivery. This report provides a summary of the planned work streams relating to licensing policy development and delivery over a two-year period (2023/24 and 2024/25). Appendix 1 sets out the high-level timeline of the planned work for this period. It should be noted that the work programme provided will be subject to change and dates stated are not fixed.

2. Recommendations

- 2.1 This report has been provided for information purposes only and therefore no decision is required.

3. Background

- 4.1 The Council is responsible for administering, determining, and ensuring compliance for many licensing regimes. The most prominent regime is for the authorisation of the sale and supply of alcohol, regulated entertainment, and late-night refreshment under the Licensing Act 2003 (2003 Act).
- 4.2 When developing or revising a policy (a review) Officers will undertake a detailed analysis of the currently policy, which will include its use, any challenges or amendments that have been identified. There will be wider consideration to the Council's strategic priorities, recent legislative of guidance changes and how the policy interacts with other Council policies. The review will then move to the public engagement and consultation phases before the final

drafting and adoption processes are undertaken. The review of larger policies can take up to a year to conclude.

- 4.3 The majority of licensing regimes do not require the Council to produce a licensing policy. However, there are two regimes that have a statutory requirement for the Council to produce a policy and keep it under review.

Licensing Act 2003 – Alcohol, Regulated Entertainment and Late-Night Refreshment.

- 4.4 The 2003 Act requires the Council to produce a Statement of Licensing Policy for a period of 5 years and that policy must be kept under review and the Council may revise it, at such times it considers appropriate. The current Statement of Licensing Policy 5-year period is due to end on the 31st September 2026.
- 4.5 As our Statement of Licensing Policy includes a Cumulative Impact Policy approach, we are also required to produce a Cumulative Impact Assessment (CIA), which sets out the evidence basis to support this policy approach. In determining whether the Council should retain a cumulative impact policy the CIA must identify that by adding licensed premises to an area it will be likely to contribute to the negative impact caused by the number of licensed premises in an area of the city. The 2003 Act requires the Council to review the CIA every 3 years and determine if it is still of the opinion that cumulative impact is still prevalent in its area. The current CIA was published in October 2020 and is due to be revised and published by no later than October this year.

Gambling Act 2005 – Gambling (land based)

- 4.6 The Gambling Act 2005 (2005 Act) requires the Council to produce a Statement of Principles (Gambling Policy) for a period of 3 years. The Gambling Policy must be kept under review and the Council may revise it, at such times it considered appropriate. Unlike the 2003 Act the 3-year policy period for this policy is fixed and therefore the Council must produce a revised version of the policy on the anniversary of its original adoption. The current 3-year policy period commenced on the 31st January 2022. At that time the Council produced an interim revision of the previous policy as a stop gap whilst a new Gambling Policy was under development. The new Gambling Policy was published on the 12th December 2022, replacing the stop gap policy. However, as the new Gambling Policy was published within the set 3-year policy period the next revision must be produced by the 30th January 2025.

Other licensing regimes with dedicated licensing policies

- 4.7 Whilst there are no statutory requirements for the Council to produce licensing policies for the other licensing regimes it is responsible for it has produced policies for the following regimes:
- Street Trading – City of Westminster Act 1999
 - Sex Establishments (Sex Shops and Sexual Entertainment Venues) – Part 2, Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 (as amended)
 - Busking and Street Entertainment – London Local Authorities Act 2000

5. Summary of Licensing Policy Work Plan 2023/24 to 2024/25

Revision of Statutory Licensing Policies (alcohol, entertainment and late-night refreshment and gambling)

- 5.1 The Council is currently reviewing its CIA as it is due to publish a revised version before the end of October. Officers are in the process of data collection and analysis before moving to the production of the CIA document itself in late July.
- 5.2 The current CIA was the first version produced by the Council following the revision of the 2003 Act making it a statutorily required document. The current CIA was based on data collected between 2017 and 2019. However, when the CIA was being finalised for publication the Country was suffering from the Covid19 pandemic. At the time the Council decided not to significantly amend its Cumulative Impact Policy within its revised Statement of Licensing Policy as the pandemic restrictions were either still in place or were in the process of being lifted and the City was going to need a period of recovery. Therefore, the full findings of the CIA do not mirror the current policy approach.
- 5.3 Based on the initial indications from the data and evidence being collected and that the full findings from the previous CIA were not fully implemented due to the pandemic it is highly likely that the CIA will show that there continues to be cumulative impact within certain parts of the city and that in granting any further licences it would likely lead to an impact on the licensing objectives under the 2003 Act. In addition to this Officers and Members of the Licensing Committee are aware that there are elements of the current policy framework that may need to be revised to keep up with the types of applications it receives and the potential impact of those operations on the city. The current policy framework relies on defining a premises based on its use and then applying that premises use policy. It has become clear that this approach is dated and that licensed premises operations don't always fit the definition of premises use as set out in those policies.
- 5.4 It is planned that following the publication of the CIA Officers will start work on a review of the Council's Statement of Licensing Policy under the 2003 Act. It is planned that a revised Statement of Licensing Policy would be produced no later than summer of 2024.
- 5.5 The Gambling Policy is new and has been in effect for just over 7 months. The statutory 3-year period when this policy must be reviewed will end on the 30th January 2025. Officers intend to start a review of the Local Area Profile, which provides the evidence base for a number of policies within Gambling Policy and the revision of the policy itself in the spring of 2024.

Revision of Busking and Street Entertainment Policy

- 5.6 The Busking and Street Entertainment licensing regime came into effect on the 5th April 2021. The scheme was introduced to reduce the impact on residents and businesses generated by buskers and street performers. The identified impact from busking and street entertainment on residents and businesses was primarily from noise, specifically amplified performances, and obstruction of the highway. When the scheme was adopted, the Council committed to undertake a review of the policy's effectiveness and whether it should be revised following a full year of operating the scheme.
- 5.7 Officers are now finishing the review and will be proposing several recommended amendments that could address specific issues that have been identified or changes to the policy to make improvements to the scheme. This review will be considered by the Council's Policy & Scrutiny Committee in late July and their comments and recommendations of the review will be considered. The Cabinet Member for Communities and Public Protection will review the report and any comments or recommendations from the Policy & Scrutiny Committee before agreeing an action plan to make changes to the licensing policy and other aspects of the scheme.

- 5.8 A report setting out proposed revision will be put before the Licensing Committee in early autumn to make a decision on whether to progress these proposed changes and if so to implement formal consultation upon them.
- 5.9 If there is an agreement to revise this licensing policy and pass a resolution to make any specific changes to the busking and street entertainment licensing regime these decisions are likely to be made by full Council and any statutory requirements of the Act will need to be complied with. However, the Licensing Committee will be engaged in any proposals to enable discussion and views to be expressed associated with any changes.

Revision of Sex Establishments Policy

- 5.10 The Sex Establishment policies for Sex Shops and Sexual Entertainment Venues have been in place for a considerable amount of time without review. The Sex Shop policy was last updated on the 15th June 1999 and the Sexual Entertainment Venues Policy hasn't been reviewed since the 10th February 2012.
- 5.11 Officers intend to produce a new Sex Establishment policy which will cover all three sex establishment categories, sex shops, sex cinema and sexual entertainment venues. Officers intend to start development of this new policy in the Spring of 2024 with the final adoption of the policy by the end of 2024.

Revision of Street Trading Policy

- 5.12 The Council's current Statement of Street Trading Policy has been in place since 2012. The policy sets out the Council's approach for the licensing of street trading in the city, which includes markets and isolated pitches.
- 5.13 It is intended to start a review of the Street Trading Policy in January 2024. The review will be an in-depth assessment of what street trading and our markets should provide to support the Council's Fairer Westminster agenda whilst also looking to enable the use of street trading to promote local entrepreneurship, provide growth, greater access to local goods and services providers within our communities and provide new and exciting street trading offer at times and locations that have historically not be available, e.g. via the development of night markets, etc.
- 5.14 The review of the Street Trading Policy will likely to lead to the development of a new policy rather than a revision of the existing policy. Officers intend to undertake significant public engagement as part of the review and development of any new policy approach as it will be essential to capture the needs of our communities and traders. The regulatory process for changing the policy and associated designations of streets or commodities can be lengthy. However, it is intended that the new or revised Street Trading Policy will be in place by the spring of 2025.

New Highways and Outside Space Licensing Policy

- 5.15 Pavement licences, under the Business and Planning Act 2020 (2020 Act), are temporary permissions granted to businesses in England and Wales to place furniture, such as tables, chairs, and temporary structures, on the pavement adjacent to their premises. These licences aim to support businesses, particularly in the hospitality industry, by allowing them to expand their outdoor seating areas and make use of highways.
- 5.16 The 2020 Act introduced streamlined procedures for obtaining pavement licences, making it easier and quicker for businesses to apply and receive permission to utilise highway areas.

The licences were intended to facilitate economic recovery, especially during times when indoor seating was limited or restricted due to Government restrictions associated with the Covid19 pandemic.

- 5.17 It was intended that pavement licences would enable businesses to create inviting outdoor spaces for customers, enhancing their dining, or drinking experience and potentially increasing footfall. By utilising pavements, businesses can provide additional seating capacity, especially in urban areas where space is limited.
- 5.18 It is important to note that pavement licences are subject to conditions and restrictions imposed by the Council when granting the licence. These conditions aim to ensure public safety, prevent obstruction or nuisance to the public, and may include limitations on operating hours, noise levels, or the number of furniture items allowed.
- 5.19 The 2020 Act initially introduced pavement licences as a temporary measure and was due to end on 30th September 2021. However, the duration of this temporary licensing regime has been extended by the Government on three occasions. The most recent extension has extended this regimes operation until the 30th September 2024. The Government are committed to making the Pavement Licence regime permanent via the Levelling Up and Regeneration Bill, once given Royal Assent.
- 5.20 As this licensing regime was intended to be a temporary regime to support businesses recover during Covid19 restrictions the Council did not feel it necessary or appropriate to implement a specific policy approach to manage these permissions and address any cumulative impact from them. As this licensing regime is likely to become a permanent scheme, it is now necessary to consider establishing a specific policy approach relating to this regime and the wider use of outside space, including the highway for licensable activities. The Council is aware of the concern that residents, particularly in Soho are expressing regarding the increase level of noise levels generated from the use of outside space and that this is potentially attracting further issues of crime and disorder and anti-social behaviour. There are also concerns that the increase capacity from the use of outside space may also significantly influence cumulative impact associated with the use of licensed premises in the area.
- 5.21 At present there are no provisions within the Levelling Up and Regeneration Bill to require a local authority to develop a pavement licence licensing policy. However, based on the level of concern from residents and the potential wider cumulative impact that the use of outside highway space for licensed purposes may be having on the West End, Officers intend to start the development of a new policy for the use of outside space for licensing activities. This policy will cover the pavement licensing regime but also more broadly any use of outside spaces for other licensable activities, such as those governed by the 2003 Act for alcohol, entertainment, and late-night refreshment. For example, this new policy may set out what is expected from applicants and licensees when applying for outside terraces, garden spaces, private forecourts, and the use of highway areas under the provisions of a pavement licence for licensable purposes. Officers may consider the inclusion of this new outside space policy within the Council's Statement of Licensing Policy or as a standalone policy. However, it will serve a dual purpose for both pavement licensing and premises licensing under their respective Acts.

Appendices

Appendix 1 – Licensng Policy Work Plan 2023/24 to 2024/25 – Timeline (High-level)

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

Mr Kerry Simpkin, Head of Licensing, Place & Investment Policy
Innovation and Change
Tel: 07583 108491, Email: ksimpkin@westminster.gov.uk

Background Papers

- Westminster City Council's Statement of Licensing Policy – Licensing Act 2003 dated 1st October 2021.
- Westminster City Council's Cumulative Impact Assessment – Licensing Act 2003 dated October 2020.
- Westminster City Council's Statement of Principles for Gambling – Gambling Act 2005 dated 12th December 2022.
- Westminster City Council's Street Trading Policy – City of Westminster Act 1999 published 2012
- Westminster City Council's Sexual Shop Policy – Part 2, Schedule 3, Local Government (Miscellaneous Provisions) Act 1982
- Westminster City Council's Sexual Entertainment Venues – Part 2, Schedule 3, Local Government (Miscellaneous Provisions) Act 1982.
- Westminster City Council's Busking and Street Entertainment Licensing Policy – London Local Authorities Act 2000
- Home Office Guidance – Licensing Act 2003 published 20th December 2022
- Gambling Commission Guidance to Licensing Authorities – Gambling Act 2003 published 1st April 2021
- Department for Levelling Up, Housing & Communities Guidance: Pavement Licences (outdoor seating) published 26th July 2022
- Levelling-Up and Regeneration Bill – HL Bill 142 (as amended in Committee)

Licensing Policy Work Plan 2023/24 to 2024/25 (high-level timeline)

Licensing Policies	Year																			
	2023					2024												2025		
	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Busking and Street Entertainment	Green	Green	Blue	Blue	Red	Red														
Statement of Licensing Policy (LA03)			Yellow	Green	Green	Blue	Blue	Blue	Red	Red	Red									
Use of Outside Spaces (Pavement Licences and LA03)			Yellow	Green	Green	Blue	Blue	Blue	Red	Red	Red									
Sex Establishments									Yellow	Yellow	Green	Green	Green	Blue	Blue	Red	Red			
Street Trading						Yellow	Yellow	Yellow	Green	Green	Green	Green	Green	Blue	Blue	Blue	Blue	Red	Red	Red

Key	
Data collection and analysis	Yellow
Scoping and engagement	Green
Formal consultation	Blue
Drafting and adoption	Red

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City of Westminster

Licensing Committee Report

Date of Committee:	17 July 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. 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 licensing appeals since March 2023, one of which has been settled and three are pending determination, as specified in section 5 below. Legal Services is also dealing with two pending

judicial reviews as set out in section 6 below.

- 4.2 To date, 489 licensing appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 486 of these appeals have been heard / settled / withdrawn, leaving three to be determined as shown below:

- 3 pending
- 59 dismissed
- 16 allowed
- 13 allowed only in part
- 168 settled
- 229 withdrawn
- 1 out of time.

5. **Appeals**

5.1 **Greggs, 1-4 Leicester Square, London, WC2H 7NA – settled**

- 5.2 As Members will recall 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.
- 5.3 Greggs appealed the Committee Decision, and the appeal was due to be heard over three days commencing on 16 May 2023 at Westminster Magistrates' Court. However, Greggs proposed a compromise on 5 May 2023 and after some discussions, it was agreed to grant a late-night refreshment licence to Greggs allowing them to sell hot drinks (but not hot food) on Sunday to Wednesday from 23:00 hours to 00:00 and on Thursday to Saturday 23:00 hours to 02:00 hours. The licence is also subject to significant conditions which include the installation of CCTV at the premises, the use of door supervisors and the clearing of litter outside the premises. Each Party has agreed to bear their own costs. The hearing date was therefore vacated.
- 5.4 Prior to the Courts approving the Consent Order, the agreement attracted some inaccurate and adverse press coverage, with Gregg's claiming a victory. The Order was subsequently approved by the Courts on the 26 May and the Premises Licence issued confirming the position.

5.5 There has been ongoing issues with Greggs regarding their interpretation of the meaning of 'hot food' under Schedule 2 of the Licensing Act 2003.

5.6 MacDonalds, 178 - 180 Edgware Road, London, W2 2DS – pending

5.7 MacDonalds applied for the extension of hours of their late-night refreshment licence which would enable them to effectively operate 24 hours a day. The Premises is situated in a Special Consideration Zone. The application attracted representations from residents, the Police, and Environmental Health.

5.8 The Licensing Committee refused MacDonalds' application to vary their Premises Licence on 9th March 2023 and MacDonalds appealed to the Westminster Magistrates' Court. The Case Management Hearing took place on 6 July and the hearing will take place at the City of London Magistrates' Court over three days on 21, 23 and 24 November 2023.

5.9 Park Street Hotel, 14 Park Street W1K 2HY – pending

5.10 This is an appeal brought by Park Street Management Co Ltd who are residents of Fountain House who opposed the grant of a new Premises Licence basically on the grounds that the application undermines the licensing objectives.

5.11 The Premises propose to operate as a 6-star hotel and restaurant with residential apartments and associated facilities. The Premises are in the West End Ward but not within the Cumulative Impact Zone or the Special Consideration Zone so there was no policy presumption to refuse the application, which had to be determined on its merits. Representations were received from Environmental Health, Park Street Management, Fountain House and five individual local residents.

5.12 The Case Management Hearing will take place on 11 August 2023 at Westminster Magistrates' Court when directions will be given for the determination of the appeal.

5.13 Piano Works, Clareville House 47 Whitcomb Street London WC2H 7DH – pending

5.14 TDC ENTS LTD appealed the Licensing Committee's decision of 27 April 2023 to refuse to grant a new Premises Licence for a live music venue with a capacity of 700 persons. The Premises is located in the West End Cumulative Impact Zone.

5.15 The Council is awaiting receipt of the summons and details of the Case Management Hearing from the Court. Members will be updated at the next Licensing Committee on the progress of this appeal.

6. JUDICIAL REVIEWS

6.1 Hemming and others v Westminster City Council - pending

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.

6.6 The Claimants failed to make an application for permission or to comply with the directions. As a result, the Council made an application for summary judgment.

6.7 At the hearing on 10 May 2023, the Claimants were represented. They informed the Court that they oppose the Council's application for summary judgment and asked for an adjournment to enable them to serve grounds and evidence in response. The Claimants have failed to serve evidence, but the application for summary judgment will be considered at the High Court on 25 July 2023.

6.8 Montpeliano, 3-17 Montpelier Street, London, SW7 1HQ - pending

6.9. Montpeliano is a restaurant which has held a converted premises licence since 2005. The Premises was taken over by another operator Monte London

Limited, who issued a judicial review against the Council on 7 June 2023 for the following reasons:

(a) They contend the Council's decision to amend the licence on its website to reinstate "restaurant conditions" which were omitted in October 2019 from the licence due to an administrative error was unlawful, and

(b) Against the Licensing Authority's decision on 17 March 2023 to refuse to grant a minor variation of the Licence, and

(c) Against the Licensing Authority's decision on 24 April 2023 to refuse to grant a second minor variation.

6.11 The Council filed its Grounds for resisting the claim on 28 June in the High Court, who will now decide whether or not to grant leave to appeal. Members will be updated of the Decision in due course.

7. Financial Implications

7.1 Legal costs are incurred in dealing with appeals, but the Licensing Authority seeks to recover its costs where it is appropriate to do so.

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. Equalities Implications

9.1 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.

9.2 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.

9.3 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