



City of Westminster

# Licensing Committee

<b>Item No:</b>	
<b>Date:</b>	9 March 2016
<b>Classification:</b>	For General Release
<b>Title of Report:</b>	Licensing Appeals
<b>Report of:</b>	Director of Law
<b>Wards involved:</b>	Not applicable
<b>Policy context:</b>	A business like approach
<b>Financial summary:</b>	None
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## **1. Summary**

1.1 This report provides a summary of recent appeal results.

## **2. Recommendations**

2.1 That the report be noted.

## **3. Background**

3.1 To date, 466 appeals have been heard / settled / withdrawn:

- 16 allowed
- 13 allowed only in part
- 56 dismissed
- 216 withdrawn
- 165 settled

## **4. Licensing Act 2003 Appeals**

### **4.1 Press, 32-34 Panton Street, London**

By application dated 4 June 2015, the Metropolitan Police Service applied for an Summary Review of the premises licence of Press Nightclub, 32-34 Panton Street, SW1.

The application was made on the grounds of the prevention of crime and disorder, public safety and the prevention of public nuisance. The review followed an incident within and outside of the premises on Sunday 31<sup>st</sup> May 2015 at approximately 02.35am, when a large scale disorder took place inside Press Nightclub. Several people were seriously assaulted and one male was stabbed in the neck. Numerous weapons were used during the incident including bottles, metal poles and tables. The disorder took place throughout the entire premises, with persons chased and attacked in staff areas. The disorder lasted approximately 10 minutes inside the venue before it spilled out onto the streets. 20-30 persons continued to fight outside the premises.

A Licensing Sub-Committee was held on 8 June 2015 to consider whether it was necessary to impose any interim steps pending the hearing of the full Review. Having watched the CCTV and considered the papers before it, as well as hearing representations from the Police and the licence holder, the Licensing Sub-Committee decided that it was necessary to suspend the primary premises licence due to the seriousness of the incident on 31 May 2015.

The full hearing of the Review was held on 29 June 2015. The Licensing Sub-Committee again heard submissions from the Police and Licensee with regards the operation of the premises and the incident on 31 May 2015. Mr Rankin on behalf of the Police advised that the licensee had denied that the stabbing had taken place inside the premises. The victim had suggested it had taken place outside and had not wished to take matters further. Mr Rankin added that the victim was known to the son of the licensee (who was also present at the time of the incident) and it may have been convenient for both parties to claim the stabbing had occurred outside. He added that the police were 99% certain that the stabbing took place within the premises. The Sub-Committee were of the view that there was a wholesale failure to manage the licensed premises and the proposals submitted on behalf of the licensee were not considered to be sufficient in the circumstances. The Sub-Committee therefore considered it was clearly appropriate to revoke the premises licence.

Notice of appeal was lodged by the Appellant's on 17 July 2015. The full hearing of the appeal is scheduled to commence on 12 January 2016 and continue on 13, 14, 15, 19 and 20 January 2016. Evidence and Rebuttal was exchanged in preparation for the full hearing with the Appellant proceeding on the basis that the decision of the Licensing Sub-Committee was correct, but that a new operator was proposed who would run the premises in a competent manner. In late November 2015, the Appellant advised of the withdrawal of their appeal as '*...it became apparent over the past few weeks from around the end of October that the appellant is insolvent.*'

A costs hearing was held on 9 February 2016 where the Court ordered that the Appellant, Paper Club London Limited, pay £39,746.20 to the City Council. The District Judge also agreed to list the matter for a further Case Management Hearing in May to enable the City Council to go back to Court if the costs are not paid. It is intended to seek costs against individual Directors who knew that the Appellant was insolvent and yet pursued with the appeal proceedings nevertheless.

#### **4.2 The London Edition, 10 Berners Street, London W1**

An application from a local resident, Mr Zafar Khalid, was received by the City Council on 22 May 2015 for a Review of the premises licence of The London Edition, 10 Berners Street, London, W1 on the grounds of the prevention of public nuisance. The Review was as a result of noise nuisance from patrons entering, exiting and smoking outside of the premises late at night, as well the noise created by cars picking up or dropping of patrons outside the premises. Representations in support of the application for review were received from the Environmental Health Service and from 15 other local residents.

The Licensing Sub-Committee considered the application on 17 September 2015. Having heard from the licensee, the applicant and those supporting the application for review the Licensing Sub-Committee considered that it was appropriate and proportionate to reduce the permitted terminal hours for the use of the public areas where alcohol was not ancillary to food and the dispersal of patrons was most likely to have an adverse impact on local residents. Members decided that the Licensee's proposed 01:00 terminal hour was acceptable on Friday and Saturday evenings which were not school days. However, the Sub-Committee decided that the terminal hours needed to be reduced to 22:30 hours on Sunday and midnight on Monday to Thursday. The Sub-Committee did not amend the proposed hours for the restaurant on the ground floor given that it was food led and customers were less likely to cause public nuisance on leaving this area.

The Sub-Committee attached some additional conditions to the licence in order to limit public nuisance, particularly relating to the dispersal of customers from the premises. These included that from 23:00 there would be two SIA registered door supervisors on duty outside the premises until 02:00. Also, Patrons who temporarily leave and re-enter the basement 'function room' e.g. to smoke would not be permitted to take drinks or glass containers with them. Patrons who were permitted to temporarily leave and then re-enter the basement function room, including to smoke or use their mobile phones, would be restricted to using the smoking area at the basement level (the smoking shelter). In addition, the Sub-Committee attached conditions which had been agreed by the Licensee, including that last admission would be at midnight, the proprietor's guest list would be limited to ten people and there would be a direct telephone number to a manager of the premises. Notice of appeal was lodged by the Licensee on 27<sup>th</sup> November 2015. The full hearing of the appeal is listed for nine days commencing on 6 June 2016.

## **5. City of Westminster Act 1999**

### **5.1 Pitch 545 and 546 Church Street Market**

Mr Zouglaheha has appealed against the decision of the Licensing Officer Panel on 30 September 2015 to revoke his street trading licences for Pitch 545 and 546 Church Street Market. The referral to the Licensing Officer Panel and the subsequent revocation of his street trading licences followed counterfeit goods found on display and for sale from the Pitches bearing a mark identical or likely to be mistaken for a registered name, mark or logo. Issues were also raised regarding items that were not on the commodities list of the licence that were being sold from the Pitches.

Notice of appeal was lodged against the revocation. A date for the full hearing of the appeal has been scheduled for 24 March 2016.

## **6. JUDICIAL REVIEWS / CASE STATED**

### **6.1 Sex Establishment Licensing - Fees**

The challenge took the form of a judicial review brought by Mr Timothy Hemming, trading as Simply Pleasure Ltd, and six other long standing licensees of sex establishments in Westminster, challenging the legality of the fee charged by the City Council for a sex establishment licence in 2011/12 (£29,102). The claim was made on two grounds. Firstly it was said that the Council had never lawfully set a fee for 2011/12. Secondly it was said that the amount of the fee was unlawful because it contained an element reflecting the cost of enforcing the sex establishment licensing regime.

The case was heard in the High Court over two days in March, both sides being represented by Leading Counsel. The Court gave judgment on 16 May, upholding the claim on both grounds.

An application for permission to appeal on the Services Directive issue, and costs, was filed with the Court of Appeal, following refusal of permission by the High Court. The Court of Appeal granted permission to appeal and the matter was heard on 14 January 2013.

Following the hearing, the parties were invited by the Court to make further written submissions on several issues, including whether it would be appropriate for the Court to refer the case to the European Court of Justice. Both parties made further written submissions

The Court handed down judgment on 24 May. The City Council's appeal on both the Services Directive issue and on costs was dismissed. An appeal on a third point, relating to the way in which fees for past years should be calculated, was allowed. The Council was ordered to pay 90% of the claimants costs of the appeal, and the claimants were ordered to pay 10% of the Council's costs. The Council's application for permission to appeal to the Supreme Court was refused.

An application was lodged to the Supreme Court itself for permission to appeal. Submissions in support of the Council's application for permission to appeal were filed by the Architects Registration Board, the Bar Standards Board, the Solicitors Regulation Authority, the Law Society, the Farriers Registration Council, the Care Quality Commission and the General Council of the Bar. An Order was received from the Supreme Court granting permission to Appeal. Applications to intervene were submitted on behalf of the Bar Council, the Law Society, the Architects Registration Board, the Solicitors Regulation Authority, the Bar Standards Board, the Care Quality Commission and the Farriers Registration Council. A conference with Counsel was held to discuss procedural issues and how best to deal with intervenors. The LGA had

been invited, and attended, the conference part way through to discuss the possible role of the LGA. It was agreed that WCC would instruct a Licensing Counsel to assist those already instructed to deal with any licensing issues and research regimes that may be impacted.

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

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

The case was heard in Supreme Court on 13 January 2015 before Lord Justices Neuberger, Clarke, Toulson, Reed and Mance. The parties are the City Council as appellant, Mr Hemming and the other sex shop proprietors as respondent, and the interveners. Seven regulatory bodies and the Local Government Association were given permission to intervene and were represented. There was also a ninth intervener at the hearing, the Treasury.

The hearing itself took place over one day. After the hearing, the Court wrote to all parties inviting further submissions on matters which, they considered, may not have been dealt with fully at the hearing because of shortness of time. These issues revolved around whether it is open to a licensing authority to charge, at application stage, a fee which is returnable if the application is unsuccessful, or whether such a fee may only be charged later, when the application is granted or at a later stage than that.

Judgment was delivered on 29 April, and, subject to one point which the Court has referred to the European Court of Justice, the City Council was successful.

The City Council submitted representations in writing on the referred questions to the ECJ on 28 September 2015. The interveners are due to submit their representations in writing by the end of November. It is understood that representations have also been made by the Netherlands and the Commission. Copies of those submissions will be circulated when all submissions have been received and translated.

Copies of all submissions made to the ECJ namely from Hemming, the European Commission and from the Netherlands have now been received. Counsel has considered those submissions and advised that an oral hearing be requested so as to maximise our prospects of achieving a successful outcome of the preliminary referral to the court in Luxembourg. An application for an oral hearing has therefore been submitted.

## **7. Legal implications**

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

## **8. Staffing implications**

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

## **9. Business plan implications**

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

## **10. Ward member comments**

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

## 11. Reason for decision

11.1 The report is for noting.

If you have any queries about this report or wish to inspect any of the background papers please contact Hayley Davies on 020 7641 5984; email: [hdavies@westminster.gov.uk](mailto:hdavies@westminster.gov.uk)

### **Background Papers**

- None