

Licensing Advice Project

**Activity Report: 1 January 2016 - 31
December 2016**



**citizens
advice**

Westminster

Executive Summary

The Licensing Advice Project was set up in 2005. It is provided by Citizens Advice Westminster and funded by Westminster City Council.

The Project provides advice, assistance, information and representation to residents and businesses in respect of their rights and responsibilities under relevant licensing legislation, namely Licensing Act 2003, Gambling Act 2005 and Local Government (Miscellaneous Provisions) Act 1982. The need for advice on these issues reflects the increased role given to residents in each of the three licensing regimes.

In 2016, there were 126 new cases opened¹. We represented residents at 38 hearings, and made written submissions in advance of 2 hearings which we were unable to attend.

Clients are advised by email, by phone, and in person. Clients can be advised in person at their convenience, including at their home or workplace. Advocacy on behalf of residents at licence hearings is a major part of the Project. The Project also has a dedicated website containing information and advice.

The Project undertakes a range of other activities, including responding to local and national consultations.

The Project has a range of benefits for clients, the local authority, and the licensing process in general, including helping to ensure that objectors focus on relevant issues in representations and at hearings.

The Project contributes to the wider Social Policy aims of Citizens Advice.

We look forward to continuing to provide tailored, focused, timely, specialist, practical and pragmatic advice, information, assistance and representation to residents and businesses in relation to these matters in 2017.

¹ An individual case may involve a single client or multiple clients, depending on the case.

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1. Introduction and overview

The Licensing Advice Project (“the Project”) is provided by Citizens Advice Westminster and funded by Westminster City Council. This Report sets out the activity of the Project during 2016. It is intended that the Report be presented to the Licensing Committee on 22 March 2017.

The Project provides free information, assistance, advice and representation to residents of the City of Westminster (including residents’ associations and amenity societies) and businesses in respect of their rights and responsibilities as “interested parties” under three licensing regimes:

- Licensing Act 2003²
- Gambling Act 2005 (since 2012)
- Local Government (Miscellaneous Provisions) Act 1982³ (since 2012)

The service is independent, impartial and confidential. It is the only service of its kind in the country.

The advice takes in a range of issues including problems with the current operation of a premises or objections to applications made under the three regimes.

The twin aims of the Citizens Advice service nationwide are:

- To provide the advice people need for the problems they face.
- To improve the policies and practices that affect people’s lives.

To this end, the Project focuses not only on casework, but also on wider issues in licensing law on behalf of residents, for example helping to ensure that developments in the law or Council procedure are disseminated, responding to consultations at both local and national level, and contributing articles for local and

² “Interested parties’ are now known as “other persons”

³ Under the 1982 Act, resident objectors are simply referred to as “objectors”

national publications.

The Project reports quarterly to a Steering Group chaired by Matthew Bennett, a resident of Westminster with expert experience of licensing issues from a resident's perspective and from a licence holder's perspective. The other members of the Steering Group are a representative from the City Council (Chris Wroe), a representative from an amenity society (David Kaner, CGCA), and the adviser's line manager.

2. The Licensing Advice Project's Service

The Project has been advising residents of Westminster since 2005. It is currently staffed by:

- The adviser - Richard Brown. Richard is a qualified solicitor specialising in licensing law, particularly in Westminster.
- Project administration and line management

Although the three regimes covered by the Project are superficially similar in terms of residents' rights and responsibilities, there are a number of important differences. It is important for residents to understand the nuances of each regime. In particular, each regime has specific parameters for what is 'relevant'.

The philosophy of enabling increased involvement by local people is common to all three licensing regimes.

Licensing Act 2003 empowered local authorities with licensing functions previously exercised by licensing justices in order to increase the accessibility of the process to residents, who 'may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors.'

Gambling Act 2005 has much overlap with Licensing Act 2003 in terms of residents' rights and responsibilities.

The amendments to Schedule 3 of Local Government (Miscellaneous Provisions) Act 1982 to include 'sexual entertainment venues' were a direct result of lobbying by certain groups with the express purpose of giving local communities more of a say in such applications.

The work of the Project was referred to as a 'best practice' example of good engagement facilitated by a local authority in '*Licensing Act 2003: its uses and abuses*' published in 2016 by the Institute of Alcohol Studies, and was part of the final recommendations made in the study.

2.1 Casework

The Project has provided information, assistance, advice and representation on the following types of application in 2016:

- new premises licence under s17 Licensing Act 2003
- variation of premises licence under s34 Licensing Act 2003
- review of premises licence under s51 Licensing Act 2003
- variation of club premises certificate under s84 Licensing Act 2003
- 'minor variation' of premises licence under s41A Licensing Act 2003
- review of premises licence under s197 Gambling Act 2005
- application for renewal of SEV licence under Schedule 3 para 8 Local Government (Miscellaneous Provisions) Act 1982
- application for new SEV licence under Schedule 3 para 8 Local Government (Miscellaneous Provisions) Act 1982
- application to vary SEV licence Schedule 3 para 18 Local Government (Miscellaneous Provisions) Act 1982
- noise/anti-social behaviour and other public nuisance issues
- information/advice on miscellaneous licensing issues – e.g. local and national consultations.

Level of work

No two cases are the same, and so it is difficult to generalise about casework. For advice on applications for licences, some clients simply request information on an application or issue and do not require further assistance. More usually, clients require more detailed advice on an application and how best to frame their objections. We would then offer to draft or assist with drafting their representations. Where clients request representation at hearings, we usually offer a face to face meeting to go through the procedure and explain what to expect. We suggest pragmatic approaches to applications, and to proposals by applicants' representatives. We do a site visit before each hearing. Following hearings, we report the outcome and any conditions which were imposed, and advise on next steps.

For noise problems and reviews, we advise on what options are available. Where appropriate, we will write to the licence holder/DPS and liaise with them on behalf of residents. We advise on what evidence residents need in order to bring an effective review application. We draft review application forms and witness statements, and assist with the procedural aspects, for instance ensuring that the application is correctly served.

Casework therefore tends to comprise three broad stages:

- **Information only,**
- **The above, plus ongoing advice and assistance,**
- **The above, plus representation at Sub-Committee hearing(s) and any necessary follow-up**

In 2016, the Project represented residents (ranging from a single individual to multiple residents, amenity societies and residents' associations) at 38 licensing hearings.

The Project was also asked to represent residents at a number of hearings which were either not necessary following withdrawal of representations after negotiations

and agreement, or where the application was withdrawn, or where we were not able to attend the hearing but instead submitted written representations in advance of the hearing.

Key features of casework

- Advice and representation can be provided to an individual client, to groups of 2 or more clients, to residents' associations, amenity societies, and to 'ad hoc' groups of residents.
- We see clients in their homes or workplace, or at a convenient place e.g. a coffee shop near their home or workplace, at a time which is, as far as possible, convenient for the client. We also see clients at our offices in Paddington.
- Clients can access the service outside working hours by email.
- Clients can access the Project website at their convenience.
- If a client is unable to attend a hearing, they can still be involved in the process by being represented at the hearing.

There are two case studies at Appendix A which give examples of the work done by the Project.

2.2 Other Project activities

- We have submitted an article for each edition of the Institute of Licensing's 'Journal of Licensing' since its inception. The articles have a focus on licensing issues affecting residents.
- We have developed and maintained a dedicated website, www.licensingadvice.org. The website has general information and advice on all three licensing regimes, and handy step-by-step guides to each are available to download.
- We maintain close links with amenity societies and residents' associations.
- We attend the Westminster Entertainment Forum.
- We submit articles for residents' magazines/newsletters.

- We respond to Westminster City Council and Government consultations
- We encourage and facilitate involvement by residents in consultations
- In 2016, we provided a written response to the House Of Lords Select Committee on Licensing, and gave oral evidence to the Select Committee.

3. Benefits of the Project

Benefits for clients

- Access to specialist legal representation in a niche area of law in relation to matters which can have a profound effect on their lives.
- The Project is a “one-stop” resource of information as well as advice and representation.
- Representation in terms of direct feedback and policy reporting to the local authority on issues affecting or likely residents.
- Representation in terms of responses to local and national consultations affecting or likely to affect residents
- We can advise and represent more than one resident through the process and/or at a hearing.
- Residents are empowered to participate in the licensing regimes.
- Residents who do not have the time, do not wish, or do not need to contact the Project directly can access the website at their convenience.
- The Project can ‘level the playing field’ at hearings by providing representation at hearings to objectors.
- The Project can speak for residents who may feel intimidated or nervous at speaking, especially where the applicant is represented by an experienced solicitor, barrister or QC.
- The Project can explain what technical aspects such as different conditions mean in practice.
- The advice provided is tailored to licensing in Westminster.
- The Project provides residents with representation when residents are unable to attend hearings because of e.g. work or holiday.
- Disabled clients who are unable to attend a hearing can have appropriate

representation.

- Where clients attend hearings, we endeavor to encourage full participation in the process and help them to address the Sub-Committee themselves to give their individual perspective.

Benefits for the local authority

- The Project can coordinate a number of representations and concerns, especially regarding last minute changes to an application or additional conditions being proposed. This can lead to more efficient hearings.
- Saving of officer time.
- The service is independent of Westminster City Council as it is provided by Citizens Advice Westminster.
- It is the only service of its kind in the country where resident objectors have access to free specialist advice and representation.
- Due to the length of time the Project has been in existence, the advice provided is tailored to specific licensing issues in different parts of Westminster.
- Clients have expressed gratitude to the City Council for providing the service.
- The service can help facilitate agencies working to a common goal e.g. when residents support responsible authority-led reviews.
- Residents can take their own action without responsible authorities having to do so e.g. licence reviews.
- Residents' views can still be heard when they are unavailable to attend a hearing, rather than requests for adjournments being made.
- Allows residents to play full role at a hearing e.g. be party to discussions beforehand/during, and receive pragmatic advice on developments.
- Reputational benefit in providing a service which no other local authority provides.
- Councillors are able to refer residents to the Project.
- Council officers are able to refer residents to the Project.

Benefits for the process as a whole

- Concerns are focused on relevant matters.
- Applicants can have one point of contact for multiple resident objectors
- Objectors sometimes withdraw or do not make representations having taken advice, thus saving time and expense for all.
- Conditions can be agreed or proposed prior to a hearing.
- Late changes to applications can be explained to residents independently.
- ‘Live’ issues can be narrowed down or at least clarified prior to a hearing.

4. Social Policy (“Campaigns and Research”)

The Social Policy work of Citizens Advice involves collecting client evidence, locally and nationally, to campaign for change to policy and practice.

Social policy work in the context of the Licensing Advice Project can include: cases where the impact of the advice given is wider than the individual to whom the advice is given, or cases which sets a precedent which has a wider impact than the individual case itself. For example, we have assisted residents’ associations/amenity societies, or individual residents who are themselves acting on behalf of other residents, or a resident shares the advice with other residents.

We also contribute to Social Policy work through dissemination of useful information about Council procedure/best practice, either through the website, by emailing amenity societies, or by informing individual clients as appropriate. For example, we have sent out topical procedural information to amenity societies - e.g. changes in contact details for the Licensing Teams and details of consultations.

5. Conclusions

The twin aims of Citizens Advice dovetail with the remit of the Project. Providing residents of Westminster with access to specialist advice and representation is an important step in ensuring that residents are empowered to exercise their rights and responsibilities and participate in the democratic process which Parliament has, in

each of the licensing regimes, entrusted to local authorities.

The effective participation of residents in these licensing regimes helps to ensure that the views of all stakeholders are taken into account when the licensing authority exercises its functions under Licensing Act 2003, Gambling Act 2005 and Local Government (Miscellaneous Provisions) Act 1982.

We look forward to continuing to meet the needs of the community by providing tailored, focused, timely, specialist, practical and pragmatic advice, information, assistance and representation in 2017.

APPENDIX A: Case study

Representations on licence applications

Location: Maida Vale

Client type: individuals

Application type: application to vary club premises certificate

Introduction and background

The premises is a popular sports club which had for many years benefitted from a club premises certificate (CPC). We were contacted by a resident who lived opposite the premises.

A CPC is a different type of permission under Licensing Act 2003. It is far less common than a 'premises licence'. A CPC authorises the provision of 'qualifying club activities' rather than 'licensable activities'.

A resident contacted us to ask for advice on the application and to ask for assistance in opposing it.

The application

The actual activities which can be permitted by a CPC are largely the same as those which can be permitted by a premises licence. However under a CPC, the activities can only be provided to members of the club and their guests, rather than to the general public. It is therefore more restrictive than a premises licence and hence benefits from some relaxation in regulation.

The applicant applied to vary their CPC to extend the licensed area to include an outside terrace/garden. Although they already had permission to supply alcohol for consumption off the premises, every CPC is subject to mandatory conditions which stipulate that off sales can only be supplied in sealed containers to members.

In fact, the client reported that the outside area was regularly used for consumption of alcohol by members, guests and what appeared to be members of the public attending various corporate events. This gave rise to a considerable degree of nuisance, particularly in the summer and in the later evening.

The premises was surrounded on all sides by residential blocks, and there was a great degree of concern at the application, given the nuisance which residents already experienced from the use of the outside area which the applicant was effectively seeking to regularise.

However, a number of the local residents were also members of the club.

We met some residents at their homes, were shown around the site, and gave detailed and lengthy advice on the content of the application and the somewhat

complex legal situation pertaining to the use of the outside area under a CPC.

We advised on the practical requirements of opposing the application, including ensuring that the licensing authority was aware of the specific local factors which made this a sensitive location, and setting out the nuisance already experienced.

The initial client and two of his neighbours, one of whom was a member of the club, were in effect coordinating the residents' opposition. Advice was given to all three. We assisted with drafting more substantial representations than had initially submitted, and advised on gathering ongoing evidence of the noise nuisance.

Casework leading up to hearing

We were contacted by the applicant's solicitor and liaised with him regarding amendments to the application and possible measures which may alleviate concerns.

We advised the residents of the proposed changes and what they meant in practice.

We agreed to represent the clients at the Sub-Committee hearing, and we coordinated the submission of further evidence, including from a resident who had not made a representation because she did not wish to be identified. We drafted a written submission to the Sub-Committee but it was impossible to establish a consensus among the residents.

It became clear that the clients were not *ad idem* on the issues, and one had significantly different views on what was acceptable should the application be granted. We had an appointment with him at our offices, and he agreed that a conflict of interest had arisen. The client agreed to represent himself at the hearing.

The hearing

We discussed the content of the Report to Sub-Committee with the remaining clients, and spoke at some length prior to the hearing with one of them and with a Councillor who was supporting them.

We explained the hearing process, and what to expect. We encouraged them to address the Sub-Committee briefly if they wished, to give their own personal perspective but being careful not to repeat things which had already been said.

The application was granted in part, but to a reduced terminal hour both inside and outside.

One client commented as follows: *'Many thanks for your help throughout. I don't think we could have presented our case better than we did.'*

Premises: Restaurant/takeaway

Location: St James' Ward

Client type: individual

Application type: application for new premises licence

Introduction and background

A well-known Japanese restaurant chain applied through their solicitors for a licence to sell alcohol at a new premises in a new development of mixed use. There was a residential block at the back of the premises, separated from the premises by a courtyard. The courtyard was surrounded on all sides by tall buildings, and therefore would amplify any noise resulting from any activities in the courtyard.

The client was referred to the Project by a Council officer at Westminster City Council. The client had been unsure as to how to respond to the application, and to whom she should address her concerns.

The client had therefore taken something of a scattergun approach, and had sent correspondence about the application to a number of different departments, before being referred to the Project.

The application

The client had submitted all correspondence by post, as she was not available over email and did not have access to the internet. She also did not have a mobile phone. We were contacted by the client on her landline, and gave some initial advice. The client explained her concerns, and expressed frustration that she had not received responses to her correspondence to the Council. She had submitted an objection.

Her concerns related largely to use by customers of the outside area at the back of the premises, which her property overlooked. Customers drinking there would cause a severe nuisance as noise would echo around the courtyard. She was also concerned about noisy deliveries and collections of rubbish. She said that the plans accompanying the application showed an area at the back and access to it.

We said that we would provide more complete advice when we had looked in detail at the application. The client requested a face-to-face appointment at 21a Conduit Place, so that she could show us relevant documentation and also some photos. Upon looking at the documentation, it seemed clear to us that the client had misunderstood the application and plans, and that the applicant did not intend to use the area at the back of their premises. In fact, it was not in their demise in any event.

The client attended her appointment, and we explained the situation to her. We were aware that a hearing date had been set. We suggested that the best way to resolve her concerns would be for her to meet with the applicant on site, see the layout of the premises, and have the applicant explain the operation of the premises to her. She thought this was a good idea, but wanted us to attend the meeting with her. The client also provided us with copies of her correspondence, photos, and relevant documentation.

Discussions between applicant and objector

We corresponded with the applicant's solicitor, explained the client's concerns, and arranged a mutually convenient date to meet on site. We kept the client updated by writing to her and enclosing the copy correspondence.

In the meantime, the client had requested a further face-to-face appointment to deliver further documentation and seek further advice about the hearing, if one was necessary.

We met on site at the premises, and the client was shown around. It was demonstrated that the applicant premises had no access to the rear of the premises and so there was no way that they could use it for any purpose at all. The client was very pleased that her concerns were alleviated, and indicated that if appropriate conditions were attached, her representation could be withdrawn.

Following the meeting, we suggested to the client wording for conditions she may wish to propose to be attached to the licence formalising what had been agreed at the meeting.

We drafted conditions, and liaised with the client by telephone and post. The client was happy with the conditions, and the applicant's solicitor agreed to them. We advised the client of how she could formalise this with the Council, as she was not available over email. We had kept the case officer updated with information on the ongoing discussions, and advised the client to write to him confirming that if the conditions were attached she would withdraw her objection.

The client hand delivered her letter to the officer. The officer confirmed to us that the letter had been received and that the licence had been granted, as the client's objection was the sole remaining objection. As such, a hearing did not need to take place, saving time and expense for all parties.

We also spoke to the Council officer who had referred the client, and who wanted to reassure the client that her letters had been received and would have been included in the hearing papers. We passed this on to the client, who was happy with the reassurance.

Conclusion

Following advice and action from the Project, the objector proactively sought to liaise with the applicant to clarify the application. In this way, the Project was able to assist in resolving the objector's concerns in a timely manner by liaising with the applicant and their solicitors on her behalf. We were also able to provide information and assistance to a resident who felt that she was not being listened to and could not access services online.

Further case studies can be provided on request.

Appendix B: Client comments/feedback

'We are happy with the decision and think the hours granted are a perfectly reasonable outcome. I was slightly apprehensive to attend yesterday, but I did find it both interesting and reassuring to see the council at work.' - **Marylebone resident.**

'It's hugely important that we were able to give voice to, and put on record the many concerns we have about the operation. And the no-smoking by staff at the rear is a major achievement as is the limit to 5 customer smokers at the front.' - **Soho resident.**

'I think it will make a big difference and will give us the improvements we are seeking.' - **Marylebone resident.**

'What a great result this morning. Thank you so much for dealing with all the detailed correspondence, for guiding us through the process and for presenting our case to the Licensing Sub-Committee. It was a magnificent result, we could not have done it without you.' - **Vincent Square resident.**

'Thank you for all you have done. [The Project] provide[s] an outstanding service to residents and thank you [] for introducing us' - **St James's resident.**

'I am very grateful for [the] excellent service you provide Westminster residents - I hope you feel good about the work you do - it really does directly impact, and in our case, very positively, on lives.' - **Regent's Park resident.**

'I'm writing to you to pass on how fantastic [the Project] has been in helping my husband and I to make an application (sic) regarding a licence change in the Marylebone area.

Because of [the] professional and very prompt and thorough help, I have been able to express my concerns appropriately about a topic I am not an expert in. I was able to brief fellow neighbours pre Christmas to encourage them to make submissions (which some of them did), and then I've been able to keep them abreast of developments. And most importantly, we have been successful in making changes to the licence application.– **Bryanston and Dorset Square resident.**

'Thank you for everything. Without [the Project] I could not have contemplated embarking on a review.' - **Soho resident.**