

Licensing Advice Project

Activity Report: 1 April 2017 - 31 March 2018



**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 important role given to residents in each of the three licensing regimes.

In the year 1 April 2017-31 March 2018, there were 138 new enquiries opened. We represented residents at 63 hearings¹, and made written submissions in advance of 3 hearings which we were unable to attend. We advised on 18 cases where representations made by interested parties were withdrawn following agreement.

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. We also undertake a range of other activities.

The Project has a number of benefits for clients, the local authority, and the licensing process in general, including helping to ensure that objectors put their views across effectively and focus on relevant issues in written representations and at hearings.

The Project contributes to the wider 'Campaigns and Research' of Citizens Advice.

We look forward to continuing to provide a tailored, timely, specialist, practical and pragmatic advice, information, assistance and representation service in the forthcoming year and beyond.

¹ A hearing may involve representing a single client or multiple clients.

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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 2017-18.

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
- Local Government (Miscellaneous Provisions) Act 1982³

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 representations/objections to applications made under the three regimes, or problems with the current operation of a premises.

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 national publications.

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

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

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, Shirley Springer, Chief Executive of Citizens Advice Westminster.

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 (Marouf Ahmed) and line management (Shirley Springer).

Licensing Act 2003 empowered local authorities with licensing functions previously exercised by licensing justices partly 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.' The philosophy of encouraging and enabling increased involvement by local people is common to all three licensing regimes.

Amendments to 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.

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

The Project has been referred to as a ‘best practice’ example of good engagement facilitated by a local authority, for example in ‘*Licensing Act 2003: its uses and abuses*’ published in 2016 by the Institute of Alcohol Studies. An advice service of this type 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 applications in 2017-18:

- 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
- ‘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 under Schedule 3 para 8 Local Government (Miscellaneous Provisions) Act 1982
- noise/anti-social behaviour and other public nuisance issues
- Information on appeals process
- information/advice on miscellaneous licensing issues

Level of work

No two cases are the same. 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 typically 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, including further submissions to the authority. We liaise with applicants' representatives and attend meetings organised with residents. This can lead to withdrawal of representations without the need for a hearing to take place. We do a site visit before most hearings. We do our best to encourage and facilitate residents speaking at hearings and to focus on relevant matters. 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 meet with licence holders and 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;**
- **Ongoing advice and assistance;**
- **Representation at Sub-Committee hearing(s) and any necessary follow-up.**

In 2018, the Project represented residents (ranging from a single individual to multiple residents, amenity societies and residents' associations) at 63 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 residents, to residents' associations, amenity societies, and to 'ad hoc' groups of residents.
- We can 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.
- 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.

2.2 Other Project activities

- We have submitted a residents-focused article for each edition of the Institute of Licensing's 'Journal of Licensing' since its inception.
- We have developed 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 submit articles for residents' magazines/newsletters.
- We respond to Westminster City Council and Government consultations
- We encourage and facilitate involvement by residents in consultations

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.

- It is the only service of its kind in the country where resident objectors have access to free specialist advice and representation.
- Representation in terms of direct feedback and policy reporting to the local authority on issues affecting or likely to affect 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.
- We can speak for residents who may feel intimidated or nervous, e.g. where the applicant is represented by an experienced solicitor, barrister or QC.
- We can explain what specific 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 representation.
- Where clients attend hearings, we endeavor to help them to address the Sub-Committee themselves to give their individual perspective. Our experience is that thus helps residents feel that they truly participate in the process.

Benefits for the local authority

- We 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 and effective hearings.
- Saving of officer time.
- The service is independent of Westminster City Council
- Councillors and officers are able to refer residents to the Project.
- The advice is tailored to licensing issues in different parts of Westminster.

- Goodwill - clients have expressed appreciation for the City Council 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 waiting for responsible authorities 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 and explanations of developments and decisions.
- Reputational benefit in funding a unique service.

Benefits for the process as a whole

- Resident involvement is encouraged, as the legislation envisages.
- 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.
- Can lead to better lines of communication between residents and applicants.
- 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. Conclusion

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, timely, specialist, practical and pragmatic advice, information, assistance and representation going forward.

APPENDIX A: Case studies

Representations on licence applications

Location: Mayfair

Client type: individuals (16) and residents' associations

Application type: application for new premises licence

Introduction and background

The application was for a new premises licence for the ground floor and basement of a building which had previously been occupied by three separate, distinct operations with their own individual premises licences.

On first floor level and upwards there were 24 residential flats whose occupants would be affected by any untoward noise nuisance.

A significant part of the applicant's case was a comparison of the historic permissions (planning and licensing) pertaining to the building, when compared to the current proposed planning use and conditions, and licensable activities.

The applicant contended that the application, when looked at 'in the round' would be less likely to have an adverse impact on the licensing objectives than the previous operations.

The application

The application had long been anticipated by residents, who knew that the building was being refurbished and that a premises licence would at some point be applied for. They accepted that a licence of some kind would be granted, but wished to restrict it to reasonable hours and conditions. In particular, they wished to raise concerns about the location of the entrance to the premises, just below many bedroom windows. The previous entrance was further away from bedrooms. This, combined with the late hour sought (1am) and the large capacity led them to disagree with the applicant's view that their application would result in a licence which would less potential to impact negatively on the licensing objectives than previously.

We undertook thorough research into the current permissions under planning legislation and licensing legislation, and made a comparison with what was being proposed now. Planning permission had been granted for a 1am terminal hour with a large capacity, but it was clear that the planning authority had (rightly) taken into account the lawful planning use, part of which was a nightclub.

One of the three previous occupants was a nightclub, which ceased operating in 2011 when it had its licence revoked. We had acted on behalf of a large number of

residents who had supported the revocation. The premises licence covered the basement of the premises and had a terminal hour of 4am. The premises caused serious problems of crime and disorder and public nuisance. The premises licence was revoked following an 'expedited' review from the Police, supported by residents. We represented residents at the review hearings and supported them through the appeal process, which was lengthy.

The other two previous occupants were restaurants, to 'core hours' and just beyond 'core hours'. One premises licence did in fact permit sale of alcohol without table meals, but was in any event operated as a restaurant. Both premises ceased trading in 2011 when the building was closed for redevelopment.

It was clear from the planning documentation that the three lawful planning uses had played a large part in the terminal hour granted, the capacity and the location of the entrance.

We advised that whilst this may have been the case in planning, it did not follow that it should be the case in licensing, because there was no premises licence for a nightclub. Therefore the comparison should be with the two restaurants for which licences remained, rather than the two restaurants and a nightclub, as the nightclub licence was revoked in 2011. This, residents felt, should lead to a different conclusion by the licensing authority.

We liaised at great length with the 'lead' resident, who also carried out a large amount of research into comparable premises and spend a great deal of time engaging with other residents to ensure a coordinated response. We drafted a lengthy submission for the resident and for his neighbours, 15 of whom signed up to the letter. We also prepared a general advice document for the 'lead' client to share with his neighbours, advising them on the requirements for submitting a representation and the sorts of issues to consider. A number of them submitted individual representations.

We arranged a site meeting with the client at his flat, and were able to gain an understanding of the points residents were concerned with.

We liaised on behalf of the clients with the applicant's solicitors, and attended a meeting with their solicitors on behalf of the clients. The main issues were discussed at length, and the views of the clients made clear to the solicitors.

We had been providing ongoing advice to the clients during the period prior to the hearing being listed.

The hearing

We were asked to represent the clients at the hearing when the application would be determined.

We obtained and distributed a copy of the Licensing Sub-Committee Report, and advised all the residents of the relevant points. There was over 500 pages of documentation, which we attempted to distil into the salient issues for residents to consider.

We met with 'lead' client at his workplace to go through the documentation and decide if anything else should be submitted. We decided to submit a further document addressing and rebutting erroneous points made by the applicant.

We prepared thoroughly for the hearing, ensuring that a strategy had been planned with the 'lead' client, and what concessions to ask for, should a licence be granted.

The applicant was represented at the hearing by a specialist licensing QC and solicitors. A number of residents attended. We represented a total of 16.

The hearing was very lengthy, and all parties had ample opportunity to submit their views to the Committee. We made lengthy submissions addressing the application, the representations, and rebutting points made by the applicant's QC, particularly the basis for the decision of the planning authority. A number of residents also addressed the Sub-Committee.

The application was granted, but to an earlier terminal hour than initially proposed. There were further concessions and conditions imposed to manage dispersal from the premises, given the location of the entrance.

Conclusion

Residents were able to put forward an effective and coherent response to a large scale application for a late night alcohol licence beneath their homes. They were able to give voice to their concerns and have some of them ameliorated by the Committee in granting the licence with additional conditions.

Premises: Outdoor area

Location: Knightsbridge and Belgravia Ward

Client type: individuals (x4) and residents' society

Application type: application for new premises licence

Introduction and background

We were contacted by a representative of a residents' society in Belgravia, who had objected to a new premises licence for a garden square.

A large number of residents had made representations in respect of the application, some in support but largely opposed.

The application

There were some unusual issues involved in the application, as the square is one of a number in Westminster covered by London Squares Preservation Act 1931. The Act stipulated that squares covered by the Act are designated as 'protected squares'. s3(1) provides that 'subject to the provisions of this Act a protected square shall not be used otherwise than for one or more of the following purposes...the purpose of an ornamental garden pleasure ground or ground for play rest or recreation ("authorised purposes")...and no building or other structure or erection shall be erected or placed on or over any protected square except such as may be necessary or convenient for or in connection with the use and maintenance of such square for one or more of the authorised purposes.'

The society had taken the view that this precluded the Council from granting a licence. We arranged a meeting with the society, attended by 3 members. Each had made their own individual representation. The residents had a number of ideas about how to best approach the application, and we advised on the feasibility of these. We gave advice on the relevance of the 1931 Act, and associated case law.

We drafted a submission on behalf of the society, covering the relevant legal, policy and factual matters in order that the Sub-Committee had a clear idea of the residents' position prior to the hearing.

We met again prior to the hearing and discussed changes which had been made to the application, and how best to approach the hearing in terms of who should speak and what matters they should cover.

The hearing

The hearing was adjourned to a different date. When the hearing took place it was attended by a large number of residents, some of whom had made representations and some of whom wished to attend the hearing as members of the public.

We represented the residents' society and a number of individual residents. As is not unusual, the application was amended both immediately before the hearing (in discussions with the applicant's solicitor) and further during the hearing itself. When this happens it really emphasizes the value of the Project representing residents at

hearings, as they may not be able to appreciate the significance of such changes made with no time given for them to consider the ramifications.

We presented the case for the residents, focusing on the relevant points, and introduced a number of them to speak. We outlined to the Sub-Committee what measures the residents thought would be appropriate if the Sub-Committee was minded to grant a licence.

The Sub-Committee did grant a licence, but on fairly limited and stringent terms, particularly as to the number of events permitted per annum.

Conclusion

The residents were pleased with the outcome. A number of residents who had not had previous contact with the Project thanked us for our efforts at the hearing.

Appendix B: Client comments/feedback

Client comment: 'I would like to express our sincere thanks to [the Project] for all your work for us. We are getting many messages from many residents to express their gratitude.' - **Belgravia resident.**

Client comment: 'Thanks you so much for all of your help yesterday. It was a fascinating (although very lengthy!) process that I would not have been confident with if it had not been for [the Project]'. – Soho resident.

Client comment: 'Yet again [the Project] delivered and made me feel informed and confident.' - **Amenity Society**

Client comment: 'Thank you for all your help with this, it has made a big difference to our quality of life. Very much appreciated. Hopefully your action will have resolved the situation.' – **Church Street ward resident**

Client comment: 'Thank you so much for ALL your support and advice. We could never have managed without you attending/representing the residents yesterday as well as guiding us through the process and legislation. The leaseholders are most grateful for your time and expertise.' – **Fitzrovia resident**

Client comment: 'That is fantastic news! I've cc'd our local Councillor who has been taking an interest in our progress.' – **Fitzrovia resident**

Client comment: 'Without [the Project] it would be nigh-on impossible for 'ordinary' folk like us to object to such applications.' – **Soho resident**