



City of Westminster

Licensing Committee

Item No:	
Date:	20 March 2019
Classification:	For General Release
Title of Report:	Licensing Appeals
Report of:	Bi-Borough Director of Law
Wards involved:	Not applicable
Policy context:	A business like approach
Financial summary:	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 Since November 2018 Legal Services has been dealing with one Licensing appeal, as specified in section 4 of this report. All previous licensing appeals have been completed as specified in the 28 November 2018 report. Legal Services are also dealing with the Hemmings case as specified in section 5 of this report.

4. Licensing Appeals

4.1 The Windmill 17-19 Great Windmill Street, London W1D 7LQ – dismissed but appealed to the Crown Court

4.1.1 Members will recall that the Licensing Sub-Committee refused an application from Big Country Ltd to renew the sexual entertainment venue ("SEV") premises licence on 11 January 2018 on the ground that the Applicant was not a suitable person to hold the SEV licence.

4.1.2 Big Country Ltd appealed this decision to Westminster Magistrates' Court and after a three day hearing Chief Magistrate Arbuthnot dismissed the appeal on 22 October 2018. The Council is seeking its costs from the Appellant in relation to the dismissed appeal and has requested a hearing to determine the costs payable.

4.1.3 The Appellant has appealed the decision to Blackfriars Crown Court and the hearing is scheduled to take place over three days, commencing on 9 July 2019. Directions have been given as to the service of evidence and the Appellant is required to serve its evidence by 24 March 2019 and the Council by 7 April 2019. The outcome of the appeal will be confirmed once the outcome has been determined.

5. JUDICIAL REVIEWS

5.1 Hemming and others v Westminster City Council

5.2 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. The Operators claimed that charging monitoring and enforcement costs would be unlawful as

this would be contrary to the Service Provision Regulations which came into force in 2009 and the European Union Services Directive.

- 5.3 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 were therefore ordered to repay the element of the fees which related to monitoring and enforcement costs.
- 5.4 Westminster appealed to the Supreme Court who decided in 2015 that local authorities were entitled to charge a fee towards the monitoring and enforcement of the licensing regime. However, the question arose as to whether that licence fee could be payable in one go, when the application was made or whether it could only be recovered if the fees were charged in two tranches. The first fee, payable at the time when the application was made, to cover the costs of processing the application and if the application was successful, a second fee charged to cover the costs of monitoring and enforcing the whole licensing regime against licensed and unlicensed operators. This scheme is commonly called a Type A scheme. At the time of the claim, Westminster was charging just over £29,000 for the annual licence fee, which was payable in full, at the time the application was made (commonly called a Type B scheme). This was on the basis that the licensing regime should be self-financing.
- 5.5 The Supreme Court sought clarification from the Court of Justice of the European Union ("CJEU"), as to whether it was lawful under European law to charge Operators under a Type B scheme (one off fee) at time the application was made. On 16 November 2016 the CJEU held that Type B scheme was unlawful as a matter of European Union law.
- 5.6 However, on 19 July 2017 the Supreme Court decided decisively in favour of Westminster that the Council 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).
- 5.7 The case has now returned to the Supreme Court for final decisions to be made following the earlier decisions in the Supreme Court and the CJEU.
- 5.8 There were two issues outstanding, namely (1) obtaining an assessment as to what costs should be paid to Westminster by Hemmings and the other Operators to cover the costs of monitoring and enforcement and (2) seeking an order for costs against the Claimants in relation to the hearing before the Supreme Court and the CJEU.

5.9 In relation to the first issue, the Supreme Court has now remitted the question of the quantum of the enforcement fees to the Administrative Court for determination.

5.10 In terms of Costs, the Supreme Court has ordered that Hemming and others shall pay the Council's costs in relation to the Supreme Court and Court of Appeal hearings. The Council is required to pay Hemming's costs in relation to the High Court case. These costs will be assessed if not agreed. No order for costs was made in relation to the hearing before the European Court of Justice.

6 RECORD OF APPEALS

6.1 To date, 475 appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 474 of these appeals have been heard / settled / withdrawn etc. as shown below:

- 1 pending
- 59 dismissed
- 16 allowed
- 13 allowed only in part
- 166 settled
- 220 withdrawn.

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. Equalities Implications

9.1 There are no direct equalities implications arising from this report.

10. Business plan implications

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

11. Ward member comments

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

10. Reason for decision

10.1 The report is for noting.

If you have any queries about this report or wish to inspect any of the background papers please contact Heidi Titcombe, Principal Solicitor and Licensing and Highways Team Manager on 020 7361 2617;
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