



City of Westminster

Licensing Committee

Item No:	
Date:	10 January 2020
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 March 2019 Legal Services has been dealing with two Licensing appeals, as specified in section 4 of this report. All previous licensing appeals have been completed. 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4.1 The Windmill 17-19 Great Windmill Street, London W1D 7LQ – dismissed and withdrawn

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.

4.1.3 The Appellant then appealed the decision to Blackfriars Crown Court and the hearing was scheduled to be heard over three days, commencing on 9 July 2019. However, the Appellant withdrew this appeal in April 2019.

4.1.4 The Council sought recovery of its legal costs in relation to both the dismissed appeal in the Magistrates' Court and the withdrawn appeal in the Crown Court. The Council successfully negotiated the settlement of the costs and the Appellant agreed to pay a total of £125,000 to the Council, comprising £90,000 for the Magistrates' appeal and £35,000 for the Crown Court appeal. The sum of £125,000 was paid in full on 4 July 2019.

4.2.1 Opium, 21 Rupert Street, London, W1D 7PJ -Pending

4.2.2 An application was made by the Metropolitan Police Service on 28 August 2019 to seek an expedited review of the above premises licence because they considered it was associated with serious crime or serious disorder. The Review application was based on a serious incident that took place during the early hours on Sunday, 25 August 2019, when one person was stabbed within the Premises, another was shot outside the Premises and fighting occurred within the

Premises.

4.2.3 The Council was required to review the licence within 48 hours of the application being made and the Police asked for the licence to be suspended as an interim step. This was not opposed by the Premises Licence Holder and the Committee decided on 30 August 2019 to suspend the licence until the hearing of the full review.

4.2.4 On 23 September 2019, the Licensing Sub-Committee heard the review application when the Police asked for the licence to be revoked. This proposal was supported by Licensing Authority but opposed by the Landlord of the Premises and the Premises Licence Holder. Whilst, Counsel representing the Premises acknowledged that his Clients had no excuse for what had happened, he submitted that a more proportionate response would be for the licence to be suspended for up to 3 months to allow the Premises to implement remedial action, as opposed to the licence being revoked. However, having carefully considering the facts of the case, the Sub-Committee concluded that the licence should be revoked in view of the seriousness of the criminal activity which had taken place and the fact that the Premises Licence Holder had failed to comply with so many conditions on their licence.

4.2.5 On 24 October 2019, the Appellant appealed to the Westminster Magistrates' Court. The Case Management hearing took place on Wednesday 20 November 2019, when the hearing was arranged for three days commencing on 15 June 2020 at Hendon Magistrates' Court.

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 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, 476 appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 475 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
- 221 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,
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