



City of Westminster

# Licensing Committee

<b>Item No:</b>	
<b>Date:</b>	1 December 2021
<b>Classification:</b>	For General Release
<b>Title of Report:</b>	Licensing Appeals Update
<b>Report of:</b>	Bi-Borough 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3.1 Legal Services has been dealing with four appeals since March 2021, two of which have been withdrawn and two are pending determination as specified below.

### 3.2 **Scotch, 13 Mason's Yard, London SW1Y 6BU – Withdrawn**

3.3 Ground Support Equipment DMCC (“Applicant”) applied for the grant of a shadow licence in respect of the above Premises on the basis that the Applicant had an interest in the business.

3.4 The application was opposed by 21 residents on the grounds of the prevention of public nuisance. The Licensing Sub-Committee refused the application on 4 February 2021 on the grounds there was insufficient evidence in the operating plan to demonstrate how the Applicant would operate the business for the hours requested without undermining the licensing objectives. The Applicant appealed the Decision, but subsequently withdrew the appeal and agreed to pay the Council £18,391.20 in costs by the end of September 2021. Those costs have not been paid and will be pursued as a civil claim.

### 3.5 **56 Wardour Street, London, W1D 4JG - Withdrawn**

3.6 Wardour Street Trading Ltd applied for a new licence for a restaurant and bar for the above premises which is in the both the West End Ward and West End Cumulative Impact Zone. The application was opposed by Environmental Health, the Metropolitan Police, the Licensing Authority, Soho Estates Limited and the Soho Society on the grounds that public nuisance, crime and disorder would be caused because of the potential numbers of customers entering the cumulative impact area.

3.7 On 3 June 2021, the Licensing Sub-Committee refused the application on the grounds that the premises would not promote the licensing objectives. The Applicant appealed and the case was scheduled to be heard at Westminster Magistrates’ Court on 7 February 2022. However, the Appellant decided to withdraw the appeal in October 2021, and we are endeavouring to reach agreement on the legal costs to be paid to the Council.

### 3.8 **Bellaria Restaurant, Basement and Ground Floor, 71 Great Titchfield Street, London, W1W 6RB**

3.9 We have received two appeals in relation to the same premises, one from the applicant and the other from an objector.

- 3.10 On 18 March 2021 the Committee determined a variation application by Mr Nimet Oner to extend the hours until 1:30 hours in the morning. Environmental Health made representations opposing the application, as did a number of residents and its neighbour, the Langham Hotel which is adjacent to the restaurant. The representations mainly related to the prevention of public nuisance.
- 3.11 The Police had initially opposed the application, but they withdrew their representation when they were able to agree conditions with the applicant which included the requirement to have a minimum of one door supervisor on duty from 21.00 to 30 min after the closing time, on the assumption that the hours would be extended to 1:30 am hours on Thursday, Friday and Saturdays.
- 3.12 The Licensing Sub-Committee granted the application in part by limiting the extension of hours to 00:30 hours on Thursday, Friday, and Saturdays, whilst retaining the door supervisor condition as agreed with the Police. The Applicant appealed the decision on two grounds. Firstly, that the door supervisor condition was unnecessary because the hours had only been extended to 00:30 hours, and secondly, because there was an administrative error in the Decision, which referred to live music being permitted to 00.30, when it should have said midnight.
- 3.13 There was also an appeal from the objector and owners of the Langham Hotel. They contend in essence that the Committee failed to have regard to its own licensing policy statement in relation to core hours; failed to require an acoustic report and had no regard to the submissions of the objectors and in their view the hours should not have been extended at all. The Langham Hotel want the case to be remitted back to the Committee for further consideration and they object to the removal of the door supervisor condition.
- 3.14 The Case Management Hearing took place on the 2 November, where the two appeals were joined, directions agreed, and the appeals are listed for a full hearing on the 4, 5 and 6 April 2023 at City of London Magistrates' Court.

#### **4. JUDICIAL REVIEWS**

##### **4.1 Hemming and others v Westminster City Council**

- 4.2 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.
- 4.3 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 was therefore ordered to repay this element of the fees which related to monitoring and enforcement costs.
- 4.4 Westminster appealed to the Supreme Court who decided after various hearings on 19 July 2017 that Westminster 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).

- 4.5 An application has been made to the Administrative Court to recover the costs payable to the Council for monitoring and enforcing the licensing regime, but this has been delayed pending the COVID-19 pandemic. The casework team at the Administrative Court have referred this case to a Casework Lawyer and we are hoping to receive an update on the case by the end of the November.

## **5. RECORD OF APPEALS**

- 5.1 To date, 481 appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 479 of these appeals have been heard / settled / withdrawn etc. as shown below:

- 2 pending
- 59 dismissed
- 16 allowed
- 13 allowed only in part
- 166 settled
- 225 withdrawn.

## **6. Legal implications**

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

## **7. Staffing implications**

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

## **8. Equalities Implications**

- 8.1 The Council must have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

- 8.2 Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

- 8.3 The Council believes there are no direct equalities implications arising 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. Carbon Impact**

11.1 It is believed there is no carbon impact as a result of this report as this relates to appeals which have been brought against the Council.

**12. Reason for decision**

12.1 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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