



City of Westminster

Licensing Committee Report

Date of Committee:	22 March 2023
Classification:	General Release
Title of Report:	Update of Licensing Appeals
Wards Affected:	All
Decision Maker:	For information
Financial Summary:	None
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1.1. Introduction

1.1 This report provides a summary of recent appeal results.

2. Recommendations

2.1 That the report be noted.

3. Reasons for Noting

3.1 To be aware of the current appeals being received and their outcome.

4. Background

4.1 Legal Services has been dealing with four appeals since November 2022, two of which have been withdrawn, one cannot be pursued and one is pending determination, as specified in section 5 below.

4.2 To date, 486 appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 485 of these appeals have been heard / settled / withdrawn, leaving one to be

determined as shown below:

- ☐ 1 pending
- ☐ 59 dismissed
- ☐ 16 allowed
- ☐ 13 allowed only in part
- ☐ 167 settled
- ☐ 229 withdrawn
- ☐ 1 out of time

5. **Appeals**

5.1 **16 Charles Street, London W1J 5DR – withdrawn**

5.2 16SC Operations Ltd applied for the grant of a new premises licence for a fine dining restaurant until 23:30 on Mondays to Thursdays, until midnight on Fridays and Saturdays and until 22:30 on Sundays. The premises is not in a cumulative impact area, so the application was in accordance with policy.

5.3 The Police, Environmental Health, and 27 local residents along with the Rosebery Mayfair Resident Association Limited (RMRAL) and Balfour Property Investments (BVI) Ltd (BPIL) objected to the application on the grounds that the premises would undermine the licensing objectives. The Police withdrew their objection after agreeing certain conditions with the Applicant.

5.4 The Sub-Committee granted the licence on 18 November 2021, subject to a number of conditions, but did not impose ten of the conditions requested by Rosebery Mayfair Resident Association Limited and Balfour Property Investments because the Committee considered they were not appropriate or proportionate.

5.5 RMRAL and BPIL appealed the Decision on the grounds that their conditions, agreed with the Applicant should automatically be attached to the licence. The Case Management hearing took place on 16 November 2022, when the Court listed the appeal for hearing at the City of London Magistrates' Court for one day on 27 April 2023. However, on the 2 March 2023 the Appellants withdrew their appeal on the basis that the Premises Licence Holder had agreed to attach four out of the original ten conditions to the licence by way of a minor variation application.

5.6 Any claim for costs would be apportioned between RMRAL and BPIL. The appeal has therefore been withdrawn on the basis that each party bears their own costs.

5.7 **Old Brewer's Yard, 5 Langley Street, London, WC2H 9JA – withdrawn**

5.8 Diageo Great Britain Ltd appealed to Westminster Magistrates Court against a decision of the Council's Licensing Sub-Committee on 30th June 2022 to grant

a Premises Licence at The Old Brewer's Yard and the Basement at 5 Langley Street London WC2H 9JA, subject to a condition that the sale of alcohol in the Brewer's Courtyard should terminate at 21.00 every day.

5.9 There were a number of objectors to the application, including the Metropolitan Police, Environmental Health, the Licensing Authority, as well as some residential objections on the grounds that extending the hours in the outside area to 22:30, with 23:00 hours closing, would undermine the licensing objectives.

5.10 This appeal was due to be heard at the City of London Magistrates' Court over three days commencing on 5th June 2023. However, the appeal was withdrawn, and the Appellant agreed to pay the Council's Legal costs of £3,720. These costs were received on 21 February 2023.

5.11 During the appeal process the Appellant submitted another application for a new premises licence restricting the hours for the use of the basement of the Premises to core hours and reducing the overall capacity which was granted on 24 November 2022.

5.12 Greggs, 1-4 Leicester Square, London, WC2H 7NA – pending

5.13 Greggs PLC applied for a premises licence to permit the late-night sale of hot food and drinks from 23:00 hours to 05:00 hours the following day, seven days a week in the heart of Leicester Square. The application was opposed by the Metropolitan Police, Environmental Health, the Licensing Authority, three local Ward Councillors and one resident. On the 29 July 2022, the Sub-Committee refused to grant the application on policy grounds stating that the Appellant had failed to demonstrate exceptional reasons as to why the application would not have a negative impact on the West End Cumulative Impact Zone and promote the licensing objectives. Greggs would need to try to convince the court that their evidence provides exceptional reasons for allowing the Premises to operate until 05:00 hours, despite being located in a cumulative impact zone.

5.14 The Case Management Hearing took place on the 5 December 2022 when the appeal was listed for hearing on 16, 17 and 18 May 2023 at Westminster Magistrates' Court. We are awaiting service of the Appellant's evidence. Members will be updated about the case in due course.

5.15 Shawarma N More Limited, 123 Baker Street, London, W1U unable to pursue

5.16 On 1 December 2022 the Licensing Sub-Committee refused an application to vary the licence by extending the hours for late night refreshment (Indoors and Outdoors) from 23:00 to 03:00 hours, with opening hours from 10:00 to 03:00 hours Monday to Sunday. If the Applicant had wanted to challenge the Decision they should have had to file an appeal in the Magistrates' Court within

21 days of the Decision being received. No appeal was made to the Magistrates' Court.

5.17 On 10 February 2023, the Applicant's Legal Advisers sent a Pre-Action Protocol letter to the Council advising that they were proposing to judicially review the Decision if the Council refused to reconsider the Decision.

5.18 On 3 March 2023 the Council rejected the claim on two grounds, firstly, that a claim for judicial review "should only be used where no adequate alternative remedy exists such as a right of appeal". As the Applicant had a right of appeal, which they had failed to exercise, they were not able to bring a claim for judicial review. Secondly, they were now out of time to issue an appeal in the Magistrates' Court.

6. JUDICIAL REVIEWS

6.1 Hemming and others v Westminster City Council

6.2 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.

6.3 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.

6.4 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) and this element needs to be determined by the Court.

6.5 The Administrative Court gave directions to resolve the remaining issues on 13 December 2022. This required the Operators of the licensed premises to apply for permission to rely on certain grounds (in accordance with the Order of the Supreme Court). No application has been made to date. Another directions hearing has been scheduled to take place on the 10 May 2023 where further directions will be given

7. Financial Implications

- 7.1 Financial implications should be completed by the relevant Finance officer.

8. Legal Implications

- 8.1 Any applicant making an application under the Licensing Act 2003 and any other party who has made a representation, is entitled to appeal a decision of the Licensing Sub-Committee provided they apply to the Magistrates' Court within 21 days of the full licensing decision being issued. Such an appeal takes the form of a complete rehearing of the case, where new witnesses can be called and often such an appeal lasts many days. A Magistrate's Court has the power to grant or dismiss the appeal or to remit the case back to the Licensing Sub-Committee for reconsideration.
- 8.2 A Magistrates' Court has the power to make any order it considers appropriate in terms of legal costs. If the Committee provides a fully reasoned decision of the application, the onus is on the Appellant to prove that the Sub-Committee's decision was wrong.

9. Carbon Impact

- 9.1 It is believed that there is no carbon impact as a result of this report as this relates to appeals and judicial proceedings.

10. Consultation

Ward Councillors have not been consulted as the determination of licensing applications is a statutory function and the Council is an automatic party if an applicant or other party decides to appeal the decision of the Licensing Sub-Committee.

11. Equalities Implications

- 11.1 The Council must have due 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.

11.2 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.

11.3 The Council believes there are no direct equalities implications arising from this report.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

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