



City of Westminster

Licensing Committee Report

Date of Committee:	4 December 2023
Classification:	General Release
Title of Report:	Update of Licensing Appeals
Wards Affected:	All
Decision Maker:	For information
Financial Summary:	None
Report's author:	Ms Heidi Titcombe Principal Solicitor (Licensing and Highways Legal Team) Heidi.Titcombe@rbkc.gov.uk For the Director of Law and Governance

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4.1 Legal Services has been dealing with four licensing appeals since July 2023, one of which has been withdrawn, a new appeal has been received, resulting in three pending determination, as specified in section 5 below. Legal Services has also been dealing with two judicial reviews as set out in section 6 below.

4.2 To date, 490 licensing appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 487 of these appeals have been heard / settled / withdrawn, leaving three to be determined as shown below:

- 3 pending
- 59 dismissed
- 16 allowed
- 13 allowed only in part
- 168 settled
- 230 withdrawn
- 1 out of time.

5. Appeals

5.1 **MacDonalds, 178 - 180 Edgware Road, London, W2 2DS – compromise agreed subject to Court's approval**

5.2 MacDonalds applied for the extension of hours of their late-night refreshment licence which would enable them to effectively operate 24 hours a day. The Premises is situated in a Special Consideration Zone. The application attracted representations from residents, the Police, and Environmental Health.

5.3 The Licensing Committee refused MacDonalds' application to vary their Premises Licence on 9th March 2023 and MacDonalds appealed to the Westminster Magistrates' Court. The Case Management Hearing took place on 6 July and the hearing was due to take place at the **City of London Magistrates' Court** over three days on **21, 23 and 24 November 2023**.

5.4 The Appellants sought to compromise the appeal by offering to close at 3.am every day of the week. This was changed in November to 2.30.am every day of the week which the Council did not consider was appropriate. However, after further negotiations, the Council agreed to settle the appeal whereby MacDonalds can provide late night refreshment until 2.30 am, but only on Fridays and Saturdays. This compromise is on the basis that the licence shall be subject to various conditions including requiring SIA door staff and an area for delivery drivers to wait on the premises. The Appellants have also agreed to pay the costs incurred by the Council in instructing Counsel. Such costs are payable within 28 days. The Council is currently awaiting the sealed Consent Order from the Court.

5.5 **Park Street Hotel, 14 Park Street W1K 2HY – pending**

5.6 This is an appeal brought by Park Street Management Co Ltd who are residents of Fountain House who opposed the grant of a new Premises Licence basically on the grounds that the application undermines the licensing

objectives.

5.7 The Premises propose to operate as a 6-star hotel and restaurant with residential apartments and associated facilities. The Premises are in the West End Ward but not within the Cumulative Impact Zone or the Special Consideration Zone so there was no policy presumption to refuse the application, which had to be determined on its merits. Representations were received from Environmental Health, Park Street Management, Fountain House and five individual local residents.

5.8 The Case Management Hearing took place on 11 August 2023 at Westminster Magistrates' Court when directions were given for the determination of the appeal. The case was listed for hearing over four days **on 20, 21, 22, 23 May 2024 at Westminster Magistrates' Court**. Members will be updated on the outcome of the appeal in due course.

5.9 Piano Works, Clareville House 47 Whitcomb Street London WC2H 7DH – withdrawn

5.10 TDC ENTS LTD appealed the Licensing Committee's decision of 27 April 2023 to refuse to grant a new Premises Licence for a live music venue with a capacity of 700 persons. The Premises is located in the West End Cumulative Impact Zone.

5.11 The Case Management Hearing was due to be heard on 9 November 2023. However, on the 12 October 2023, the Appellant withdrew the appeal. As minimal costs were incurred, the Parties agreed to bear their own costs.

5.12 Vanity Bar and Night Club at 4 Carlisle Street, London, W1D 3BJ – pending

5.13 This is an appeal against the refusal of the Licensing Sub-Committee on 25 May 2023 to renew the sexual entertainment venue licence. The main grounds of refusing to renew the licence was because of the constant breaches of the licence, so the Committee did not have confidence that the operator would comply with the conditions of the licence.

5.14 The renewal was opposed by the Police and five interested Parties. The Case Management Hearing took place on 9 August 2023 at Westminster Magistrates' Court when the court gave directions for the determination of the appeal. The appeal was set down for hearing over three days **on 5, 6 and 7 March 2024 at Westminster Magistrates' Court**. Members will be updated as to the outcome of the appeal in due course.

6. JUDICIAL REVIEWS

6.1 Hemming and others v Westminster City Council – pending

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 On 25 July 2023, three of the Claimants agreed to settle the action by consent as follows:

(1) The First Claimant (Timothy Martin Hemming) has agreed to pay the Council the sum of £179,978

(2) The Second Claimant (James Alan Poulton) has agreed to pay to the Council the sum of £355,956.

(3) The Third Claimant (Harmony Limited) has agreed to pay to the Council the sum of £179,978.

6.6 The First, Second, and Third Claimants have also agreed to pay the Council's costs of £40,900, for which they shall be jointly and severally liable. The position in relation to the other claimants is as follows:

(4) Gatsile Limited and Swish Publications Limited are dissolved companies therefore the matter cannot be pursued against them any further.

(5) Darker Enterprises Limited is in liquidation and the liquidator has confirmed that there are no funds therefore the matter cannot be pursued further.

(6) Winart Publications limited is in liquidation but funds are available, although the Liquidator is disputing that the money can be used to pay the sum owed to

the Council, and the matter is still being pursued by the Council. At present without prejudice discussions are taking place between the parties.

6.7 Montpeliano, 3-17 Montpelier Street, London, SW7 1HQ - consent order signed

6.8 Montpeliano is a restaurant which has held a converted premises licence since 2005. The Premises was taken over by another operator Monte London Limited, who issued a judicial review against the Council on 7 June 2023 for the following reasons:

(a) They contend the Council's decision to amend the licence on its website to reinstate "restaurant conditions" which were omitted in October 2019 from the licence due to an administrative error was unlawful, and

(b) Against the Licensing Authority's decision on 17 March 2023 to refuse to grant a minor variation of the Licence, and

(c) Against the Licensing Authority's decision on 24 April 2023 to refuse to grant a second minor variation.

6.9 The Council filed its Grounds for resisting the claim on 28 June in the High Court and the Parties were awaiting the Court's decision as to whether or not they were going to grant leave to judicially review the Council. However, the Claimant also submitted a more detailed fresh application for a minor variation. The Claimant indicated they would be prepared to withdraw the judicial review if the Licensing Authority approved the revised minor variation application.

6.10 The minor variation application was deemed granted on 22 September 2023 after taking into account the additional submissions provided in respect of the sky light in the application form; the operator agreeing to a condition that the number of persons accommodated in the lower ground floor shall be limited to 30 persons (excluding staff) at any one time and a confirmation that the sale of alcohol would be restricted to persons taking a table meal. The amended plan was approved, and variation will have no effect until the works have been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.

6.14 As the minor variation approval can be appealed, the judicial review has been stayed pending the expiry of the appeal period. Once the appeal period has expired, providing no appeal has been made, the Claimant will withdraw the judicial review.

7. Financial Implications

7.1 Legal costs are incurred in dealing with appeals, but the Licensing Authority seeks to recover its costs where it is appropriate to do so.

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. Equalities Implications

- 9.1 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.
- 9.2 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.
- 9.3 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:

Ms Heidi Titcombe, Principal Solicitor at 07739 314073 or by email at
email: heidi.titcombe@rbkc.gov.uk