



City of Westminster

Minutes

Meeting:

Licensing Committee

Time and date of meeting:

**10:00 hours on Wednesday 9 July 2014 at City Hall,
64 Victoria Street, London, SW1E 6QP**

Attendees:

Councillors:

- Tim Mitchell (Chairman)**
- Heather Acton**
- Nickie Aiken**
- Rita Begum**
- Melvyn Caplan**
- Nicholas Evans**
- Jean-Paul Floru**
- Peter Freeman**
- Angela Harvey**
- Patricia McAllister**
- Jan Prendergast**
- Shamim Talukder**
- Aziz Toki**

Apologies:

Councillors Susie Burbridge and Louise Hyams.

Contact:

**Jonathan Deacon
Senior Committee and Governance Officer**

Details:

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1. DECLARATIONS OF INTEREST

1.1 There were no declarations of interest.

2. MINUTES

2.1 The minutes of the Licensing Committee meeting held on 12 March 2014 were agreed as a correct record and were signed by the Chairman.

3. DEREGULATION BILL 2014 - LICENSING PROPOSALS

3.1 Barry Panto, Senior Assistant Solicitor, introduced the item. He stated that the report distinguished between the proposals relating to alcohol and entertainment licensing set out in the Government's Deregulation Bill and the proposals for the deregulation of entertainment licensing. Elements of the deregulation of entertainment licensing had either already been implemented by the Live Music Act 2012 and the Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 or had been proposed for implementation. The second wave of entertainment deregulation was still due to be implemented by a Legislative Reform Order but had appeared to be delayed. This included the proposals that live music and recorded music would no longer be licensable between 08:00 and 23:00 in licensed premises (open for on-sales) or in a workplace with an audience of not more than 500 people.

3.2 Mr Panto took Members through the proposals relating to alcohol and entertainment licensing in the Deregulation Bill. In respect of Community and Ancillary Seller Notices ('CANS'), there would be greater detail to follow in the secondary regulations. It was being proposed to allow small-scale, "low" risk alcohol sales over 36 months, without the need for a premises licence or Temporary Event Notices ('TENS') providing there is no objection from the Police, Environmental Health or the local authority. The proposal for TENS was to increase the maximum number per year from 12 to 15. In respect of personal licences it was proposed that a personal licence would continue indefinitely rather than all personal licences having to be renewed after 10 years as was the case currently. It was being suggested that the section of the 2003 Act would be repealed which made it an offence to sell liqueur confectionary to children aged under 16. Clause 56 of the Bill would insert a new paragraph into the Licensing Act to give licensing authorities the powers to exempt a supply of hot food and hot drink from the licensing requirements in specific circumstances. Clause 57 would amend the Licensing Act to remove the requirement to report a loss or theft to the Police before a copy of the document could be issued. It was proposed in Clause 58 to remove the requirement for the need for a licence for exhibition of films in 'community premises' where conditions were satisfied including that the entertainment is not provided for profit and that the audience consists of no more than 500 people. Mr Panto added that a proposal relating to street trading was that appeals of a more general nature would no longer be heard by the Secretary of State but by the Magistrates Court on the grounds that they have more expertise in making such determinations.

- 3.3 The Chairman welcomed Members' comments. He commented that to date he was not aware of too many issues arising from the implementation of the first phase of the deregulation of entertainment licensing. However, there could potentially be some problems with live or recorded music being exempt before 23:00 hours in licensed premises with an audience of up to 500 people if this was introduced. The licensing authority did potentially have powers at a review hearing in respect of live or recorded music if there was evidence to demonstrate that a public nuisance was being caused. In terms of the Deregulation Bill, CANs were likely to be a burden on licensing officers as they would be required to check existing records. Councillor Caplan made the point that there would need to be more definition of community groups who would be exempt from the requirement to have a premises licence. Mr Panto commented that secondary regulations were likely to be provided and also guidance to support the Bill. Councillor Floru expressed the view that there could be increased bureaucracy as a result of implementing the CAN licence process. These included the secondary regulations and local authorities potentially bringing in their own regulations, including whether to reject CANs in their own cumulative impact policy areas. He criticised the excessive regulation required in the suggestion that sellers might only supply limited amounts of customers to their customers such as one 75ml bottle of wine in a room per two night stay or between two adults with a meal.
- 3.4 The Chairman expressed concerns regarding the proposal to remove the requirement to renew a personal licence after ten years. This was likely to remove the mechanism for identifying licence holders who had got criminal convictions for offences but who had not declared them. Deirdre Hayes, Service Manager, Environmental Health Consultation & Licensing, advised Members that direction on this point from the Home Office would be useful as significant officer resource time was required to deal with personal licences. There was a debate around the potential powers to exempt late night refreshment in certain circumstances. Councillor Acton expressed disappointment that the proposals did not seek to address shisha cafes. Councillor Floru asked about the Council's evidence in terms of the link between late night refreshment and alcohol-related crime and disorder. Peter Large, Head of Legal and Democratic Services, advised that the Council had produced specific evidence of the link, including for appeals that the Council had pursued such as one involving McDonalds in Leicester Square. Mr Large also commented on the proposals relating to street trading that it should be very much up to the Council what pitches it chose to designate and de-designate and what fees to set, subject to complying with the law. If the Council got the process wrong, there was the option to judicially review. It was illogical that the Magistrates Court would decide such appeals rather than the Secretary of State as district judges did not have specific expertise in this area. Councillor Harvey raised the point that it would be useful to join licensing officers when they inspected premises in the West End in order to have an increased appreciation of the issues they faced and the impact on the stress area. The Chairman informed her that officers would shortly be contacting Members of the Licensing Committee to invite them to attend inspections of licensed premises.

3.5 **RESOLVED:** That the contents of the report be noted.

4. LICENSING APPEALS

- 4.1 The Chairman provided a brief introduction, particularly for new Members to the Committee, of the Hemming case relating to sex establishment licensing fees. He emphasised that a particular implication of the case was that it undermined the ability to charge a fee which would enable the Council to recover the cost of enforcement. Members of the Committee noted that a date for the hearing in the Supreme Court had been set for 13 January 2015.
- 4.2 The Committee received a report with the latest information on the appeals that had been submitted in relation to decisions taken by the Licensing Sub-Committee. Mr Large advised that there had not been any recent appeal decisions but there were a number of appeals scheduled to be heard in the near future. In terms of appeals against the decisions of the Sub-Committee taken under the Licensing Act 2003, these included Pleasure Lounge in Rupert Street scheduled for the end of July, La Bodega Negra in Moor Street and Ognisko Polskie in Princes Gate in early September, Le Vieux Comptoir in Moxon Street in late September and Ham Yard Hotel (site surrounded by a number of streets including Denman Street and Great Windmill Street) in late October. Mr Large expressed the view that it was likely that the appeal for Boulevard in Walker's Court would be delayed until the middle of September and be heard at a similar time to the appeal for Avalon in Shaftesbury Avenue.
- 4.3 Mr Large stated there were two upcoming appeal hearings that were not Licensing Act 2003 applications. One was Paddy Power's appeal against the Sub-Committee's decision to refuse the Gambling Act 2005 application for 195-197 Edgware Road scheduled for mid November and the other was a appeal against the revocation of a street trader's licence in respect of Pitches 619 and 620 Church Street Market for which a date in the Crown Court is awaited (the appeal had been dismissed in the Magistrates' Court).
- 4.4 Mr Large also explained the current position at Amika in South Molton Street. The Police had submitted an expedited review in April following a serious incident of crime and disorder. An interim steps hearing had taken place within a couple of working days and the Sub-Committee had taken the decision to suspend the premises licence. The full review had taken place in May and the licence had been revoked. The licensee for Amika then appealed the decision. It is the Council's position that the interim steps imposed by the Sub-Committee continue to apply until the appeal is disposed of. It was understood, however, that the Appellant's legal advice was that the interim steps ceased to have effect after the full review hearing. The premises subsequently operated and sold alcohol. The Police had now applied for a Closure Order and the Council had applied to be heard as an interested party. A date had been set for the hearing of the Closure Order of Friday 11 July.
- 4.5 Councillor Caplan referred to the Council's successful record of defending appeals under the Licensing Act 2003 set out in the report. Mr Large stressed

that the Council was almost always successful on appeal if the decision was consistent with policy. The vast majority of appeals were dismissed, withdrawn or settled. Where applications were settled prior to reaching the Magistrates' Court, this was on terms that were almost always in keeping with the Council's policy. The Committee congratulated Legal on the record of defending appeals. Councillor Toki asked Mr Large about costs relating to appeals. Mr Large replied that where the Council won the case in the Magistrates' Court, it was in the vast majority of cases awarded costs. Where the Council lost, the law stated the other side would not obtain costs (due to the Council being a public authority exercising its public functions) unless it was believed it had behaved unreasonably. It was extremely rare therefore for the Council to have costs awarded against it. There were occasions where costs had been awarded to the Council but these had not been recovered due to the opposing side's business folding.

4.6 **RESOLVED:** That the contents of the report be noted.

5. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

5.1 The Chairman consented to a matter being raised by Councillor Floru. Councillor Floru asked Committee Members to consider whether there were some unintended consequences of having a strict policy where alcohol was required to be ancillary to food. One potential consequence was that new bars were not being created in certain areas. This was assisting the traditional pubs that were being protected. Patrons were standing outside these pubs drinking and this practice appeared to be increasing, which had been partly due to the smoking ban but not all outside drinkers were smokers. There were implications for residents from outside drinking and he questioned whether the Council's revised policy could look to be more innovative.

5.2 Councillor Mitchell commented in response that residents would also have concerns regarding vertical drinking bars in their communities. Pubs were closing up and down the country due to factors such as taxation and social factors. Both Councillor Mitchell and Councillor Aiken made the point that there were changes to the style of the operation at many pubs with food being more central to what was being offered in the style of gastro pubs. Councillor Mitchell added that it was not the case that the Sub-Committee said no to all the establishments that had applied to sell alcohol which was not ancillary to food. It was necessary to look at applications on their merits. Councillor Caplan stated that there was a distinction between premises in the stress areas and outside the stress areas. There were some new bars opening in the West End. In certain locations outside the stress areas it was the case as Councillor Floru had commented that there were significantly fewer bars opening. Much depended on whether an application was in a residential area and would impact on the residents. Councillor Acton added that the Council always had to be aware of the consequences for the residents in the vicinity if a new trendy bar was permitted and consider when the application was submitted whether the licensing objectives were being promoted.

6. FUTURE LICENSING COMMITTEE MEETING DATES

6.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 19 November 2014 and Wednesday 11 March 2015. Both meetings are scheduled for 10.00am.

7. EXEMPT REPORT UNDER REGULATION 14 OF THE LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

7.1 **RESOLVED:** That under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 the public be excluded from the meeting for the following item of business on the grounds that the report contains legal advice to the Authority which outweighs the public interest in the matter taking place in public.

8. LICENSING ACT 2003 - SECOND OR "SHADOW" LICENCES

8.1 The Committee received a report regarding applications submitted for secondary or "shadow" licences at premises which already hold a licence under the Licensing Act 2003.

8.2 **RESOLVED:** That the contents of the report be noted.

9. MINUTES

9.1 The confidential minutes of the Licensing Committee meeting held on 12 March 2014 were agreed as a correct record and were signed by the Chairman.

9.2 The Chairman thanked his predecessor Councillor Audrey Lewis for her major contribution to licensing at the Council, including on behalf of the Licensing Committee and Licensing Sub-Committee, prior to becoming Lord Mayor. He advised Members attending their first Licensing Committee meeting to get in touch with him or officers if they had any queries.

9.3 Councillor Floru requested that the name of the case officer was included on all Licensing Sub-Committee reports whether these were applications under the 2003 Licensing Act or those under different legislation.

9.4 **RESOLVED:** That the name of the case officer be included on all Licensing Sub-Committee reports.

10. CLOSE OF MEETING

10.1 The meeting ended at 11.25pm.

Chairman

Date