



City of Westminster

Licensing Committee

Item No:	
Date:	19 November 2014
Classification:	For General Release
Title of Report:	Licensing Appeals
Report of:	Head of Legal and Democratic Services
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3.1 To date, 454 appeals have been heard / settled / withdrawn:

- 16 allowed
- 11 allowed only in part
- 54 dismissed
- 208 withdrawn
- 165 settled

4. Licensing Act 2003 Appeals

4.1 Ham Yard Hotel, Site Bounded by 5-10 Denman Street, 33-36 Great Windmill Street, 14-18 Ham Yard and 1-7 Smith's Court W1

By application received on 30 May 2013 Firmdale Hotels Plc applied for a new premises licence so as to permit:

- 1) Regulated Entertainment (Indoors and Outdoors) – Monday to Sunday 00.00 to 00.00
- 2) Late night refreshment (Indoors and Outdoors) Monday to Sunday 23.00 to 05.00
- 3) Sale of Alcohol (On and Off sales) Monday to Sunday 00.00 to 00.00
- 4) Opening Hours – Monday to Sunday 00.00 to 00.00

Representations objecting to the application were received from the Environmental Health Service, the Metropolitan Police Licensing Team, 2 residents associations and 2 local residents.

The Sub-Committee considered the application on 11 December 2013. The applicant's representative commented that a key reason for the application being an exception to policy was the reputation of Firmdale, the Applicant Company. Similarly to Ham Yard, his client Firmdale had opened the Soho Hotel at a site which had previously been an area of crime. It had been operated successfully as had other Firmdale hotels in Westminster over a 31 year period. He was not aware of any complaints relating to the hotels at Soho Hotel, Charlotte Street Hotel or Haymarket Hotel. This, he believed, went beyond the concept of running the premises well which the Licensing Authority expected of all licence holders.

Having heard from the applicant's, the Metropolitan Police, the Environmental Health Service and a local resident the Sub-Committee announced it wished to give additional thought to the various aspects of the application and as such the decision would be made available within five working days.

On 17 December 2013, the decision of the Sub-Committee was sent to the applicant and objectors. The Sub-Committee considered that it was in keeping with Policy HOT1 of the Council's Statement of Licensing Policy 2011 to grant the aspect of the application requiring alcohol to be sold at any time to people staying in hotel rooms for consumption on the premises and also the exhibition of film, in the form of recordings or non-broadcast television programmes to be viewed in hotel bedrooms. The Sub-Committee also was of the view that it was acceptable for hotel residents to have up to 5 bona fide guests at Ham Yard Hotel.

The Sub-Committee gave careful consideration to the elements of the application where the Applicant had applied for a terminal hour of 03:00 for licensable activities. Members considered that there were sufficient safeguards to ensure the licensing objectives would not be undermined in the event that a 03:00 terminal hour was permitted for private pre-booked events in the Event Room and Bowling Alley and on the ground floor and for pre-booked or ticketed events in the Theatre and Meeting Rooms in the basement.

The Sub-Committee granted a terminal hour of 01:00 for the restaurant on the ground floor where the sale and supply of alcohol would only be to persons seated taking a table meal there and for consumption by such persons as ancillary to their meals and by waiter and waitress service.

For the designated bar area on the ground floor, the Sub-Committee granted Core Hours. Alcohol in this area would not be ancillary to a meal and the condition as worded would permit vertical drinking. It would potentially add to public nuisance with the public having ability to use the bar area until the early hours of the morning and it becoming a destination venue.

The Sub-Committee noted that the Applicant had already amended the terminal hour for the fourth floor terrace to 21:30 hours. Members considered that the use of the courtyard terrace was also likely to cause nuisance to local residents at a later hour of the evening.

Notice of appeal was lodged by the Applicant's against the decision of the Licensing Sub-Committee. The Court have listed the matter for 5 days commencing 27 October 2014 at Westminster Magistrates' Court.

Subsequently a formal offer of compromise was put forward by the Appellant in an open letter, involving a later hour for the fourth floor terrace, and for the ground floor bar. That offer was considered by the Licensing Sub-Committee, and rejected. Upon being advised of the Sub-Committee's decision to refuse settlement, the appellants withdrew their appeal and agreed to pay the City Council's costs of £25,000.

4.2 Boulevard, 7-12 Walker's Court W1

By application made on 5th December 2013, the Metropolitan Police Service applied for an expedited review of the premises licence for "The Boulevard" located at 7-12 Walker's Court W1. The application was made under s53A(1)(b) of the Licensing Act 2003 on the grounds that the premises were associated with serious crime or disorder. The Metropolitan Police sought the immediate suspension of the licence pending the full hearing.

On 9 December 2013 the Licensing Sub-Committee met to consider whether it was necessary to take interim steps pending the determination of the full review. Before the hearing commenced the Freeholders, Soho Estates Limited, submitted a valid transfer application. The application took immediate effect. Members of the Sub-Committee heard evidence and submissions from both the Applicant and the Licensee. Following lengthy examination and questioning by all parties, the Licensing Sub-Committee felt it necessary to impose an immediate suspension of the licence.

The full hearing of the review application was considered by the Licensing Sub-Committee on 2 January 2014. It had not been disputed by the Licensee that the premises had been associated with serious crime which had been uncovered as part of the covert police operation designed to combat venues suspected to be involved in the offence of handling stolen goods. The Police's position was that the premises licence should be revoked despite the transfer of the licence to what the police believed to be a reputable company, Soho Estates Ltd. The reason the Licensee wished to continue the

licence was its commercial value. However, it was the view of the Police that the crime and disorder licensing objective overrode this. A particular concern was that the licence could be returned to another tenant who was minded to engage in similar conduct to the licence holder prior to Soho Estates.

The Licensing Sub-Committee were of the view that it would undermine the entire principle of the review process if premises were able to automatically avoid the consequences of serious crime as a result of corporate entities or individuals submitting a transfer licence. Members of the Sub-Committee would be abandoning their responsibility if they believed that the simple remedy to transfer the licence was sufficient. Whilst the transfer of the licence was something that had to be taken into account, it had to be weighed against the serious criminal activity that had taken place at the premises. In the circumstances, the Sub-Committee considered that it was appropriate to revoke the licence in order to promote the licensing objectives.

Notice of appeal was lodged on behalf of Soho Estates Ltd. The full hearing of the appeal was scheduled to take place on 21 and 22 July 2014 at Westminster Magistrates' Court. The Appellant's representatives advised of the withdrawal of the appeal prior to the full hearing commencing.

4.3 Pleasure Lounge, 52 Rupert Street, London W1

By application made on 5th December 2013, the Metropolitan Police Service applied for an expedited review of the premises licence for "The Pleasure Lounge" which is located at 52 Rupert Street, London W1. The application was made under s53A(1)(b) of the Licensing Act 2003 on the grounds that the premises were associated with serious crime or disorder. The Metropolitan Police sought the immediate suspension of the licence pending the full hearing.

On 9 December 2013 the Licensing Sub-Committee met to consider whether it was necessary to take interim steps pending the determination of the full review. Members considered the evidence and heard submissions from both the applicant and the Licensee. Following lengthy examination and questioning by all parties, the Licensing Sub-Committee felt it necessary to impose an immediate suspension of the licence.

The full hearing of the review application was considered by the Licensing Sub-Committee on 2 January 2014. The licensee was not in attendance at the hearing and was not represented. The Sub-Committee viewed, in private, video footage showing specific interactions between Test Purchase Officers and employees of the premises which reflected the accounts set out in the 'evidential summary' in the Report. From the footage recorded on covert video and audio recording equipment from March 2013 to October 2013, Members were able to reach the logical conclusion that some of the people connected with the management of the venue were well aware of, if not actively involved in, serious criminal activity associated with the premises.

Having read the report provided, heard from the Metropolitan Police and observed video footage at the hearing, Members were satisfied that the premises had been associated with serious crime which had been uncovered as part of the covert police operation designed to combat venues suspected to be involved in the offence of handling stolen goods. The Sub-Committee considered it was appropriate to revoke the licence in order to promote the licensing objectives.

Notice of appeal was lodged on behalf of Sylwia Grzyb against the decision of the Licensing Sub-Committee to revoke the premises licence. The full hearing of the appeal was held on 24th, 25th and 28th July 2014 at Westminster Magistrates' Court. The Appellant had served no evidence and failed to comply with any of the Court Directions. Neither the Appellant nor their instructing solicitor attended the hearing. Instead, Counsel had been instructed to attend and request an adjournment following the refusal of a previous written request for an adjournment. The District Judge

refused to adjourn the hearing. Counsel instructed on behalf of the Appellant was without further instruction. In the circumstances, the Judge dismissed the appeal and awarded full costs to the City Council in the sum of £23, 155.22.

4.4 Ognisko Polskie (Polish Hearth Club), 55 Princes Gate, SW7

By application dated 9 October 2013 Ognisko Polskie (Polish Hearth) Limited applied for a new premises licence to permit:

1. Regulated Entertainment (Indoors) – Monday to Thursday 10.00 to 23.30; Friday to Saturday 10.00 to 00.00 and on Sunday 12.00 to 22.30
2. Late Night Refreshment (Indoors) – Monday to Thursday 23.00 to 23.30 and Friday to Saturday 23.00 to 00.00
3. Sale of Alcohol : Consumption (On and Off) – Monday to Thursday 10.00 to 23.30; Friday to Saturday 10.00 to 00.00 and on Sunday 12.00 to 22.30

Representations objecting to the variation application were received from the Environmental Health Service, Metropolitan Police, 7 local residents, 3 residential associations and 2 Councillors.

The Sub-Committee considered the application on 28 November 2013. The Sub-Committee noted that the proposed hours were within the Council's Core Hours and the Polish Hearth Club was not located in one of the designated stress areas. However, Members also considered that the Polish Hearth Club is located in a very residential area and there was a lack of clarity within the application as to the steps which would be taken to prevent public nuisance.

The Sub-Committee decided that it was prudent for the terrace area to close at 21:00 hours given that it would be used by the public and not just Club members and also that the numbers using the restaurant were likely to rise resulting in more potential noise on the terrace. Members considered that there was a lack of clarity from the Applicant of the use of the third and fourth floors and therefore permitted licensable activities only on the basement, ground floor and first floor and second floor function rooms. In order to prevent public nuisance the Sub-Committee limited off-sales to part consumed and resealed bottles of wine supplied ancillary to a meal.

Notice of appeal was lodged by the Applicant's and a date for the full hearing of the appeal was scheduled for 4th, 5th and 8th September 2014 at Westminster Magistrates' Court. Prior to the full hearing taking place, the Appellant solicitors advised of their instruction to withdraw the appeal.

4.5 Avalon at 39-45 Shaftesbury Avenue, London, W1D 6LA

By application received dated 27 December 2013, the Metropolitan Police applied to review the premises licence for the nightclub 'Avalon' located at 39-45 Shaftesbury Avenue, London W1D 6LA under section 53A(1)(b) of the Licensing Act 2003 (premises associated with serious crime and disorder). The application was made by the Metropolitan Police following a fatal shooting within the premises on 26 December 2013 at approximately 03.00. At the time of the incident, the premises were operating under a Temporary Event Notice (TEN).

Since the transfer of the licence approximately one year previously to the current licensee, Zafaran Limited, and the operation of the premises as 'Avalon', there had been 5 recorded allegations of GBH assaults, 3 ABH assaults and 5 incidents of common / public order offences. Of those assaults, 7 had occurred since 24 November 2013.

The Licensing Authority held a hearing on 30 December 2013 to consider whether it was necessary to take any interim steps pending the determination of the full review applied for. Upon hearing evidence and submissions from the Metropolitan Police and from the Licensee, the Licensing Sub-Committee felt it was necessary to suspend the licence.

The full hearing of the review was held on 21 January 2014. The Sub-Committee heard submissions from the licensee and from the Metropolitan Police. The Sub-Committee also heard from representatives of the landlord, Delfont Mackintosh Theatres Limited, who explained a notice to terminate the lease had been issued and that the landlord had applied for a transfer of the licence but there were outstanding issues with the Council as to whether consent had been given and whether the application could proceed without consent.

The Sub-Committee was horrified that such an event had taken place and could not remember a time when there had been a fatality of this kind in a licensed premises in Westminster. The possibility that people associated Westminster clubs with fatality was not something which the Sub-Committee expected to have to deal with and needed to be taken extremely seriously. The Sub-Committee made it clear that it could not allow itself to be involved in any decision that suggested that this kind of situation could arise again. The Sub-Committee therefore considered that it was appropriate to revoke the licence due to the extreme seriousness of events.

The Sub-Committee also believed that where a licence holder had behaved so reprehensibly it seemed entirely inappropriate that they should be in a position to decide how the premises would continue to operate, which in effect was what was being proposed. The diligence by the Police in examining proposals and clarifying the relationship between parties had been helpful.

Notice of appeal was lodged on behalf of the Landlords, Delfont Mackintosh Theatres Limited. The Appellant made a compromise proposal, under which the licence would be amended to permit a restaurant with bar, and that offer was considered and rejected by the Licensing Sub-Committee. The full hearing of the appeal took place on 18th, 19th and 22nd September 2014 at Westminster Magistrates' Court. At the hearing the Appellant's case was that the licence should not be revoked, but should be amended to permit a restaurant with no bar, and with a 1am terminal hour. The City Council's position was that the appropriate course was for the Court to dismiss the appeal and for the Appellant to submit a new application for a licence for the proposed establishment. The appeal concluded on the 22nd September and judgment was reserved. Judgment has since been received dismissing the appeal. A costs hearing is scheduled to take place on 21 November 2014.

4.6 La Bodega Negra, 14-16 Moor Street / 9 Old Compton Street

By application received on 2 December 2013 Moor Street Limited applied to vary the premises licence of La Bodega Negra, 14-16 Moor Street, London W1D 5NN. The variation application sought:

To vary condition 10 from the existing licence from:-

"The premises shall only operate as a restaurant:

- (i) in which customers are shown to their table, except in the areas marked taqueria and brasserie on the ground floor plan.*
- (ii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery except in the areas marked taqueria and brasserie on the ground floor plan.*

(iii) *which do not provide any take away service of food after 11pm for immediate consumption except as part of room service to the hotel rooms, and*

(iv) *where intoxicating liquor shall only be sold, supplied or consumed on the premises to persons who are bona fide taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals OR to:*

- *Those who are waiting to dine or have already dined or to*
- *Persons attending a pre-booked private or corporate function up to 20 times per annum and/or*
- *Hotel residents and their bona fide guests”*

To:

“(a) *With the exception of the hatched bar areas, of **both** the ground floor (Moor Street) and basement (Old Compton Street) plans where up to 12 customers are permitted to purchase alcohol without food, the premises shall only operate as a restaurant: (Total 24 customers).*

(i) *in which customers are shown to their table, except in the areas marked taqueria and brasserie on the ground floor plan;*

(ii) *which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, except in the areas marked taqueria and brasserie on the ground floor plan;*

(iii) *which do not provide any take away service of food after 11pm for immediate consumption except as part of room service to the hotel rooms, and*

(iv) *where intoxicating liquor shall only be sold, supplied or consumed on the premises to persons to are bona fide taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals OR to:*

- *those who are waiting to dine or have already dined or to*
- *persons attending a pre-booked private or corporate functions up to 20 minutes per annum and/or*
- *hotel residents and their bona fide guests.”*

(b) *The hours that the customers (referred to in A above) are permitted to purchase alcohol without food from the ground floor bar area (hatched on the plan) and the basement bar area (hatched on the plan) shall be:*

Monday – Sunday 10:00 to 22:30 inclusive

Those customers shall be required to leave the premises by 23:00

(c) *The availability of alcohol without food shall not be promoted or advertised externally.*

Objections were received to the application from the Environmental health Service.

The Licensing Sub-Committee considered the application on 30 January 2014. The Sub-Committee did not consider that there were exceptional reasons for granting the application. The Sub-Committee did not accept that the reduction in hours during which the concession would apply would make any difference as that could still result in up to 24 non-dining customers leaving the premises at 11 pm which was late enough to cause a problem. The Sub-Committee was of the view that this application would add cumulatively to the problems being caused in the area. It fully endorsed the decision taken on 31st October 2013 and did not think that the reduced hours sought in this application were sufficient as to justify the granting of the application as an exception to policy.

The hearing of the appeal took place on 1st and 2nd September 2014, and the appeal has been allowed. The District Judge concluded that an exception to Policy was justified on the basis that the premises were exceptionally well run, and the small number of customers permitted to drink without a meal would not add to problems of cumulative impact. He made no order as to costs.

4.7 Le Vieux Comptoir, Basement, 20 Moxon Street

The premises operate on the ground and lower ground floor levels as a retail shop / delicatessen / café providing on and off sales of alcohol. The premises currently benefit from a premises licence that permits the 'On' sale of alcohol Monday to Sunday to 20.00 and the 'Off' Sale of alcohol Monday to Sunday to 22.30. By application received on 31 October 2013 Bubbles and Wine Limited applied to vary the premises licence of Le Vieux Comptoir, 20 Moxon Street, London W1. The variation application sought to extend hours for licensable activities to 23.00 on Monday to Saturday and 22.30 on Sunday. The application also sought the amendment of various conditions including an increase in the numbers of persons permitted in the basement from 50 to 75.

Objections were received to the application from the Environmental health Service, one Councillor and four local residents.

The Licensing Sub-Committee considered the application on 16 January 2014. Having heard submissions from the licensee and from the objectors, the Sub-Committee considered that the original decision in November 2012, including the conditions attached to the licence, had proved to be correct. Taking into account the evidence received regarding noise emanating within the premises, it was clear that the licensing objectives would be undermined if the proposed licensable activities and the increased hours were granted at this residential location. The application was therefore refused.

Notice of appeal was lodged by the licensee and a date for the full hearing of the appeal was scheduled for 25th, 26th and 29th September 2014. Prior to the full hearing taking place, the Appellant's advised of the withdrawal of their appeal.

4.8 Amika, 43 South Molton Street, London W1

By application dated 24 April 2014, the Metropolitan Police applied to review the premises licence for Amika, 43 South Molton Street, London W1 under section 53A(1)(b) of the Licensing Act 2003 (premises associated with serious crime and disorder). The application was made by the Metropolitan Police following an incident at the premises on Monday 21st April 2014 at approximately 02:10. The disorder appears to have been between two groups of males at different tables in the basement area of the venue. The fight included bottles being thrown and being used to hit people. This resulted in a customer being the victim of a glass enabled GBH, where he was hit in the face by a piece of glass from a smashed bottle. CCTV shows that the disorder continued inside the venue for 13 minutes including serious disturbances at the entrance where persons are seen throwing glasses and bottles from inside (CCTV footage shows persons in the foyer picking up glasses and bottles from the reception desk and throwing them out of the premises through the door). Simultaneously, males outside the premises are seen fighting with metal poles and ropes.

After the sustained attack, the doors of the premises are breached and both groups who ran towards Oxford Street. It was at this point that Police were called by the premises. The fighting continued in Davies Street and Oxford Street where males attacked several vehicles with metal poles as they drove by.

The management and security had no control of the premises and were unable to prevent the escalating serious disorder and violence.

No suspects were detailed, victims were not identified and First Aid was not given. The scene of the disorder both inside and outside was cleared immediately and the Police were not called until after all parties involved had left the premises.

The Metropolitan Police were of the view that the level of the disorder and violence during this incident was so serious that it represented significant failings in upholding and promoting the Licensing Objectives.

An expedited hearing of the Licensing Sub-Committee was held on 29 April 2014 to consider whether it was necessary to take any interim steps pending the determination of the full review applied for. Upon hearing evidence and submissions from the Metropolitan Police and from the Licensee, the Licensing Sub-Committee felt it was necessary to suspend the licence.

The full hearing of the review was held on 19 May 2014. The Sub-Committee heard submissions from the licensee and from the Metropolitan Police. The Sub-Committee heard that the Licensee's premises had previously been located in Kensington High Street where a review of the premises licence had taken place and the hours on the licence had been cut back and that the decision was upheld on appeal. The Licensee had then re-located to South Molton Street and had opened there in April 2012. The current full review was the second at South Molton Street and the third the Licensee had been involved in. Conditions had been attached to the licence by the Sub-Committee at the review in August 2013 and then further conditions had been attached in April 2014 as a result of a minor variation following incidents including a glassing and a stabbing in February 2014. Mr Rankin, on behalf of the Metropolitan Police, commented that the minor variation had resulted from an informal review by the Police where the Police would have considered taking matters further had the Licensee not consented to agreeing the conditions.

Based on all the evidence heard the Sub-Committee unanimously agreed, in keeping with the view of the Sub-Committee at the interim stage, that they had no confidence in the Licensee and/or the management of the premises. The Sub-Committee considered it was appropriate to revoke the premises licence.

Notice of appeal was lodged on behalf of the Licensee and the full hearing of the appeal was listed for 9, 10, 14 and 16 October 2014 at Westminster Magistrates' Court.

It is the Council's position that the interim steps imposed by the Licensing Sub-Committee on 29 April 2014 continue to apply until the appeal has been disposed of. However, it is understood that the Appellant's legal advice is that the interim steps ceased to have effect after the Licensing Sub-Committee hearing on 19 May 2014. The premises were found operating and selling alcohol on 27th May which resulted in the service of a section 19 notice by Metropolitan Police. The Metropolitan Police then sought a section 20 Closure Order at the Magistrates' Court. The City Council were joined as an Interested Party to the Closure Order Proceedings. The full hearing of the Closure Order was held on 11 July 2014 at Westminster Magistrates' Court. Judgment was reserved and subsequently handed down confirming the grant of the Closure Order.

The Appellant's representative subsequently advised of their instruction to withdraw their appeal against the decision of the Licensing Sub-Committee. A costs hearing is scheduled for 21 November 2014 for costs orders in respect of both Closure Order proceedings and appeal proceedings.

5. GAMBLING ACT 2005

5.1 Paddy Power, 195-197 Edgware Road, W2 1EY

On 29th January 2014 an application, made under the Gambling Act 2005, was received for a new betting shop at 195-197 Edgware Road, W2 1EY (ground floor only). The application received twenty three representations against it.

The application was considered by the Licensing Sub-Committee on 9 April 2014. The Sub-Committee were most concerned about the location of these premises in this specific area and did not think that the applicant had adequately assessed the area or identified any measures to specifically address concerns about homeless and other vulnerable persons living in close proximity to the premises. The Sub-Committee did not believe that they would be undertaking their responsibilities correctly if they did not take into account the evidence received which appeared to demonstrate that granting the application would add to vulnerable persons being harmed or exploited by gambling. The Sub-Committee refused the application.

Notice of appeal against the decision of the Licensing Sub-Committee was lodged by the applicants and the full hearing of the appeal was scheduled for 17 to 20 November 2014 at Hammersmith Magistrates' Court. In preparation for the appeal hearing, an analysis of the Council's evidence and the research relied upon was undertaken and a number of inconsistencies were found. Following an exchange of evidence, the Appellant's wrote to the City Council highlighting the inconsistencies in the City Council's material and offering to claim no costs if the City Council conceded to the grant of the licence. Counsel's advice was sought and the matter was referred back to Licensing Sub-Committee for consideration. The Sub-Committee authorised the compromise of the appeal on the terms proposed.

6. CITY OF WESTMINSTER ACT 1999

6.1 Pitches 619 and 620 Church Street Market

Mr Mahmadin Lalludin has been licensed for the sale of toys from Pitches 619 and 620 on Saturdays in Church Street Market since July 2011. The weekly charge for the street trading licence is £24.40 in respect of each pitch.

Throughout 2012 and 2013 Mr Lalludin repeatedly failed to pay his street trading fees when due and only made block payments upon the threat of revocation of his street trading licences. Following numerous warning letters and referrals to the Licensing Officer Panel for arrears on his account, Mr Lalludin was invited to attend a Licensing Officer Panel in October 2013 where the revocation of his licence would be considered.

On 29 October 2013, Mr Lalludin attended the Panel hearing. He claimed not to have received the invoices for August, September or October 2013 and that he had been unaware of the arrears. He also said that he had been out of the country for one week, visiting his mother, who was unwell, in Afghanistan.

The Panel advised Mr Lalludin that the letter of invitation to the Officer Panel Hearing had included details of the arrears on his account and that, even if he had not received any of the previous invoices, he would have been aware of the arrears on his account three weeks prior to the Panel hearing and yet had not made any attempt to clear them. The Panel explained to the Appellant that convening a Licensing Officer Panel was a costly process, and that it was not a tool for repeatedly and continually chasing persistent arrears.

The Panel decided to revoke the Appellant's street trading licensing in respect of Pitches 619 and 620 Church Street Market on grounds that he had, for a period of four weeks or more, failed to pay fees due to the Council, and that he had persistently failed to pay fees or charges as they fell due to the Council.

On 21 November 2013 the Appellant lodged an appeal to the Magistrates' Court against the decision to revoke his licence. The full hearing of the appeal was heard at the City of London Magistrates' Court on 5 June 2014. Mr Lalludin attended Court, he was not represented. He advised the Bench that he had paid all of his fees and therefore his licence should not be revoked. Counsel for the City Council advised the Court that even throughout the appeal period Mr Lalludin had fallen into arrears on his account and failed to make payments on time. Having heard from both the Appellant and the Respondent, the Bench dismissed the appeal and awarded costs in full to the Respondent. Mr Lalludin immediately advised that he would appeal to the Crown Court. In response, the Magistrates warned Mr Lalludin of the further cost implications of such an appeal and the likelihood of further costs being awarded against him.

An appeal to the Crown Court was subsequently received and the matter was listed for full hearing on 23 September 2014 at the Central Criminal Court. Having heard from Mr Lalludin and from Deirdre Hayes on behalf of the City Council, the Court dismissed the appeal and awarded costs to the City Council in the sum of £2052.00.

7. JUDICIAL REVIEWS / CASE STATED

7.1 Sex Establishment Licensing - Fees

The challenge took the form of a judicial review brought by Mr Timothy Hemming, trading as Simply Pleasure Ltd, and six other long standing licensees of sex establishments in Westminster, challenging the legality of the fee charged by the City Council for a sex establishment licence in 2011/12 (£29,102). The claim was made on two grounds. Firstly it was said that the Council had never lawfully set a fee for 2011/12. Secondly it was said that the amount of the fee was unlawful because it contained an element reflecting the cost of enforcing the sex establishment licensing regime.

The case was heard in the High Court over two days in March, both sides being represented by Leading Counsel. The Court gave judgment on 16 May, upholding the claim on both grounds.

An application for permission to appeal on the Services Directive issue, and costs, was filed with the Court of Appeal, following refusal of permission by the High Court. The Court of Appeal granted permission to appeal and the matter was heard on 14 January 2013.

Following the hearing, the parties were invited by the Court to make further written submissions on several issues, including whether it would be appropriate for the Court to refer the case to the European Court of Justice. Both parties made further written submissions

The Court handed down judgment on 24 May. The City Council's appeal on both the Services Directive issue and on costs was dismissed. An appeal on a third point, relating to the way in which fees for past years should be calculated, was allowed. The Council was ordered to pay 90% of the claimants costs of the appeal, and the claimants were ordered to pay 10% of the Council's costs. The Council's application for permission to appeal to the Supreme Court was refused.

An application has now been lodged to the Supreme Court itself for permission to appeal. Submissions in support of the Council's application for permission to appeal have now been filed by the Architects Registration Board, the Bar Standards Board, the Solicitors Regulation Authority, the Law Society, the Farriers Registration Council, the Care Quality Commission and the General Council of the Bar. An Order has now been received from the Supreme Court granting permission to Appeal. Applications to intervene have been submitted on behalf of the Bar Council, the Law Society, the Architects Registration Board, the Solicitors Regulation Authority, the Bar Standards Board, the Care Quality Commission and the Farriers Registration Council. A conference with Counsel was held to discuss procedural issues and how best to deal with intervenors. The LGA had been invited, and attended, the conference part way through to discuss the possible role of the LGA. It was agreed that WCC would instruct a Licensing Counsel to assist those already instructed to deal with any licensing issues and research regimes that may be impacted.

The LGA have subsequently advised us that they have been advised by Counsel to apply to intervene by making written submissions.

A date for the hearing in the Supreme Court has been set for 13 January 2015.

8. Legal implications

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

9. Staffing implications

9.1 There are no staffing implications for the City Council arising directly 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.

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 Peter Large on 020 7641 2711; email: plarge@westminster.gov.uk

Background Papers

- None.