



CITY OF WESTMINSTER

MINUTES

Licensing Committee

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Committee** held on **Wednesday 30th November, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

Members Present: Councillors Nickie Aiken (Chairman), Heather Acton, Susie Burbridge, Peter Freeman, Murad Gassanly, Angela Harvey, Louise Hyams, Tim Mitchell, Jan Prendergast and Aziz Toki

Apologies for Absence: Councillors Rita Begum, Melvyn Caplan, Nick Evans, Jean-Paul Floru and Shamim Talukder

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 21 September 2016 were agreed as a correct record and were signed by the Chairman.

2.2 Councillor Angela Harvey had sought clarification at the previous meeting of the Committee as to whether the Council's legal representatives had previous experience of taking forward cases in the European Court of Justice. Mr Panto, who had not been in attendance at the previous meeting, informed Members at the current meeting that David Matthias QC had represented the Council in the CJEU in respect of the Hemming case. He has extensive licensing experience, including representing the Council for its licensing appeals. Mr Panto stated it was his understanding that this was Mr Matthias' third matter which had reached the CJEU (he clarified that it may have been that Mr Matthias had not appeared on each occasion as it was believed a case may have been withdrawn). He added that it was Mr Matthias' first case at the CJEU under the terms of the Licensing Act 2003. The Committee noted that it was also believed to have been Philip Kolvin QC's first licensing case at the CJEU, when he represented Hemming and others versus the Council. He also has extensive experience of licensing matters.

3 LICENSING FEES REVIEW 2017/2018

- 3.1 Kerry Simpkin, Licensing Team Manager, introduced the report. He stated that the report set out proposed fees for licensing regimes where the Council has the power to set its own fees for 2017/18. He wished to emphasise that there were other fees that would be brought before the Sub-Committee at a later date such as the street trading fees.
- 3.2 Mr Simpkin advised that the fees were being set at a level which would enable the Council to recover its costs in managing and administering the licensing regimes. It was proposed that the fees would come into effect from 1 January 2017. He referred to the fees which had increased or decreased from the levels from agreed by the Committee in November 2015 and introduced in January 2016. The majority of fees had been subject to an increase. The licensing fees for premises that provide special treatments within the borough had increased significantly last year as part of the fee review. It was proposed that as part of this year's review, fee levels for new, renewal, transfer and confirmation of provisional licence applications would be reduced. Mr Simpkin added that all applicants would be informed of any changes to the fees for the various licensing regimes prior to 1 January 2017.
- 3.3 The Chairman thanked officers for all the time and effort they had put in to calculate the fees. She had worked with them and was able to vouch for the fact that the levels set were a true reflection of the work of the officers in relation to the various licensing regimes. The Committee made a number of points and asked Mr Simpkin a number of questions regarding the fees, including the following:
- Councillor Freeman asked whether there was an upper limit for the setting of fees. Mr Simpkin replied that the only set of fees that is capped is the gambling premises licences. Local authorities were required to assess all other fees.
 - Councillor Gassanly welcomed that it was proposed that fee levels for new, renewal, transfer and confirmation of provisional licence applications for special treatments would be reduced. He asked whether there was a reason for Westminster setting higher fees than some neighbouring boroughs, including in relation to special treatment licences. Mr Simpkin responded that fees were set based on the Council's costs. It was difficult to compare other Councils as they might have a different model in terms of costs, salaries etc. He stated that in respect of special treatment licences, officers were exploring whether to base specific fees for special treatments on a number of criteria, including what was involved with the different types of treatments provided and the risk assessment required. This would require significant additional administrative work. At the moment there was a flat fee based on average costs for the special treatments.
 - Councillor Mitchell in his capacity as the Cabinet Member for Finance and Corporate Services made the point that it was important that there was full cost recovery and that it was unfair if residents were asked to subsidise businesses. He welcomed that there was a consistent system in place to review fees.

- Councillor Harvey asked whether it was specifically possible to set different fees for small, medium and larger businesses and assist those attempting to establish smaller businesses. Was more enforcement required for larger businesses? Councillor Burbridge also put forward the idea of a discount for new businesses in their first year. Mr Simpkin replied that it would be good to reduce fees for smaller businesses. However, smaller businesses often cost more as they regularly required a lot more work in terms of enforcement and compliance. The concept of different fee levels for specific types of businesses was something that officers would continue to look at going forward.
- Councillor Acton asked why the costs for riding establishments had risen. Mr Simpkin stated that there was a legal requirement for them to be inspected on a yearly basis. The Council had not prior to 2016 charged for costs associated with the vet inspections. The vets' fees had increased and it had been necessary for the Council to pass these on. There was also a greater involvement in terms of staff time as previously the vet had carried out more of the administrative work.
- Mr Simpkin was asked about the costs for the zoo. He stressed that the figure quoted in the report is for a six yearly licence. The DEFRA inspection costs which needed to be absorbed as part of the costs amounted to approximately £1100 per year.

3.4 The Chairman made the point that any suggestions relating to assisting small businesses needed to be raised with the Cabinet Member for Housing, Regeneration, Business and Economic Development.

3.5 **RESOLVED:** That the proposed fees attached to the report as Appendix 1 be approved commencing 1st January 2017.

4 REVISION OF STANDARD CONDITIONS FOR STREET TRADING LICENCES AND PENALTY POINT SCHEME

4.1 At the previous meeting of the Licensing Committee in September, the Licensing Committee approved that all holders of street trading licences and their associations would be consulted on a proposal to revise the standard conditions that apply to their licences and also the penalty point scheme that is used to enforce the standard conditions. Robin Grey, Senior Licensing Officer (Street Trading) confirmed that since the previous meeting of the Committee, the consultation process had taken place. The concerns of the West End Street Trading Association made during the consultation period had been addressed by the amendments included in the proposed conditions that were set out in Annex A of the Committee report and also as a result of the three additional amendments to Annex A of the Committee report (conditions 22, 42 and 49) which were set out in paragraph 1.2 of the updated report.

4.2 Mr Grey stated that there was one remaining objection from the Green Park Arts & Crafts Association. As set out in the report, condition 23 required 'that the trader shall, at all times that they are trading, display a plate supplied by the Council indicating the licensed pitch number of the stall. This plate shall be kept prominently exhibited on the stall together with the name or business

name of the trader'. The objection, due to safety and security concerns, had related to the trader's name and photograph being displayed on the licence plates. The Committee was advised that the licence plates were intended to demonstrate to the public that the trader is licensed and has been approved by the Council to operate at the location. Mr Grey informed Members that there was no change in the meaning of the condition from that set out in condition 13 of the existing standard conditions and officers were not proposing to amend the proposed condition 23 in Annex A.

- 4.3 The Committee considered it appropriate to agree the amended recommendations set out in paragraph 2.1 of the updated report.
- 4.4 **RESOLVED:** (i) That conditions 22, 42 and 49 of Annex A of the Committee report be replaced with the conditions set out in paragraph 1.2 of the updated report;
- (ii) That the Committee prescribe the standard conditions set out in Annex A of the Committee report with the amendments referred to in (i) above that will apply to all street trading licences pursuant to section 10(1) of the City of Westminster Act 1999 and that will replace the existing standard conditions that have applied to all street trading licences since 15 March 1999, once they come into force; and,
- (iii) That the Committee recommend to the Cabinet Member for Housing, Regeneration, Business and Economic Development that the schedule to the penalty point scheme is replaced with the table set out in Annex E of the Committee report as and from the date that the revised standard conditions come in to force.

5 WESTMINSTER LICENSING STANDARD/CHARTER AND LOCAL ALCOHOL ACTION AREAS APPLICATION

- 5.1 The Chairman stated that she, Richard Cressey, Principal Policy Officer and officers in the Licensing Service had been working with the entertainment industry since the start of the financial year to develop a voluntary Westminster Standard or Charter which promotes responsible behaviour amongst licensees and sets the standard in terms of caring for the welfare of their patrons and being good neighbours. As set out in the report, this was a core commitment of City For All: Year 2.
- 5.2 Mr Cressey referred to the progress being made. This included that there was a good working partnership with Heart of London Business Alliance who were keen to support the Council with this initiative in the Leicester Square/Piccadilly Circus area. Mr Cressey advised that there was already good practice in the area. The Council was looking to build on that, refresh how it worked with the trade and support the businesses to operate improved collective management standards. It was hoped that this would result in the area becoming even more profitable and marketable, as well as better managed. He had set out in the report what the Council was asking the

industry to do, including signing up to voluntary schemes which exist in other cities such as Best Bar None.

5.3 Mr Cressey stated that as part of these discussions with the industry, the businesses were saying that they were prepared to support the initiatives but that they were seeking a commitment from the Council and Police as to how they would support them to achieve the well managed environment. He added that there were proposals in the report which explored possible innovations in approach and policy and he was seeking a steer from the Committee. These included reforming how the Council and Police identify problem premises by using a wider range of factors than purely crime data such as phone thefts. This was something the industry had been requesting for some time. Training and support was already being provided to licensing premises but this could be increased. There was an opportunity for more partnership working which was being trialled in Carnaby Street / Kingly Street as well as Leicester Square / Piccadilly Circus.

5.4 Members responded to the points raised by Mr Cressey in the report and at the meeting, including the following:

- The Chairman stated that she concurred with the view that there were well run premises where there were reported phone thefts which identified them as problem premises. On the other hand there were premises which were appallingly run and had not been identified as problem premises due to a lack of crime data. Councillor Mitchell made the point that it could be a sign that premises were well run if they encouraged crimes to be reported correctly. There were instances where staff removed patrons from their premises so that they were drunk and disorderly on the street.
- Councillor Hyams asked whether there were any downsides from drawing in and coordinating support from voluntary schemes such as Drinkaware Crew and Street Pastors. It sounded like a positive idea. Mr Cressey replied that in some cases the downside was the cost which it would be necessary for the industry to meet. The Drinkaware Crew would be members of staff that were employed by premises. This would not be imposed on the industry but the Council would be encouraging businesses to see the benefits of the scheme. The role of the Drinkaware Crew, which is a national body, typically includes overseeing a queue going into a nightclub, identifying where patrons had left bags or phones in order to reduce the potential for crime and aiding dispersal of patrons to reduce the potential for public nuisance. They were willing to offer training free as they were keen to be involved in the borough. Mr Cressey informed those present that there were Street Pastors in Westminster currently but not in the trialled areas. A discussion would potentially need to take place with the Business Improvement Districts about whether to introduce Street Pastors in these areas. Conversations had taken place with the Police about a focal point or hub where information is provided and Street Pastors give medical treatment. The Police had hosted an information hub of this type during this year's Pride celebrations. Councillor Hyams expressed the view that these schemes should be trialled.

- The Committee noted the section of the report which referred to the Local Alcohol Action Areas. Councillor Harvey asked whether it was possible to capture the data of the cost of private individuals who became excessively drunk and ended up in Accident and Emergency ('A&E'). Mr Cressey responded that the reason reducing alcohol-related health harms had not been selected as an objective was that the data was particularly difficult to obtain. It had been stated in the Council's application to the Home Office that this would be monitored where possible. It was possible to obtain ambulance service data as it was monitored where people were picked up from. The A&E data was not as useful as it monitored where the individual resided and not where they were collected. Mr Cressey added there was some ongoing work that needed to be taken forward with the health service so that the data was gathered in an appropriate way.

5.5 **RESOLVED:** (i) That the contents of the report be noted; and

(ii) That officers take into account the views of the Committee as set out above.

6 LICENSING APPEALS

6.1 The Committee noted the most recent information in respect of appeals which had been submitted in relation to decisions taken by the Licensing Sub-Committee. One appeal for Press, 32-34 Panton Street had been withdrawn by the Appellant and costs had been paid to the City Council in February 2016. At a subsequent Case Management Hearing in October, individual directors were required to pay costs as appeal proceedings had been pursued even though they had been aware that the Appellant was insolvent.

6.2 Two appeals had recently been scheduled. One for Chutney Mary, 72-73 St James's Street is due to be heard in February 2017. An appeal for 28th floor and 29th floor, Millbank Tower is due to be heard at the end of March / beginning of April 2017.

6.3 The report also set out the implications of the Court of Justice of the European Union's judgment in the case of Hemming and others v Westminster City Council which had been handed down on 16 November.

6.4 The Chairman requested that in addition to having a regular item listing the most recent appeals received, there should be an item once a year which provides year on year data in order that it could be established whether there are any specific appeal trends that it would be of value taking into account.

6.5 **RESOLVED:** (i) That the contents of the report be noted; and,

(ii) That an appeals item be produced for the Committee once a year which provides year on year data.

7. DISCUSSION PAPER - LICENSING NEWS AND COST EFFECTIVE RESIDENT/BUSINESS COMMUNICATIONS

- 7.1 The Committee received a discussion paper on the Licensing Service's review of how it communicates with the public and licensees relating to licensing applications and information. The Chairman referred to the fact that there had been information technology issues in the last few months which had prevented the Licensing Team producing Licensing News in its previous format. This had occurred at a similar time to when the future of Licensing News had been consulted on. These two matters were entirely unconnected. However, it had brought a number of very important matters to the forefront. Councillor Karen Scarborough had been concerned about the future of Licensing News. The Chairman had asked her to work with officers on producing a plan as to how the Council should communicate with residents, in particular about licensing applications, in the future. From the consultation process and from discussions with Councillor Scarborough, it was clear that there was a need for a Licensing News document to be published. However, the Chairman added that it was not clear whether Licensing News in its current format is fit for purpose. She was keen to seek the views of Members of the Committee on the points set out in the discussion paper.
- 7.2 Mr Simpkin advised that the review was a major piece of work, assessing functions which the Licensing Service carry out which are not statutory requirements. As part of this work, officers in the Licensing Team had asked themselves four questions, 'why do we provide the communication?', 'who is the intended audience?', 'does the content meet the needs of that audience?' and 'does it provide a cost effective means of communicating the information?' He brought to Members' attention that the likes of the consultation letters, Licensing News and lamppost notices had been introduced prior to the Licensing Act 2003 and officers had not previously reviewed in detail whether these non-statutory processes were still fit for purpose.
- 7.3 The Chairman recommended that in addition to Members of the Committee commenting on the questions and points in the discussion paper at the current meeting, they would have the option to contact officers in the Licensing Team with any views they had post meeting. Comments made by Members during the meeting included the following:
- Councillor Hyams expressed the view that officers should not rely on social media only to consult residents and businesses. All age groups needed to be catered for. Councillor Hyams and Councillor Burbridge shared the view that information should be made available in The Westminster Reporter and in libraries. Councillor Hyams queried whether the consultation letters for applications were effective. She supported the retention of lamp post notices.
 - Councillor Mitchell stated that there were a lot of tools and information on the website should residents' groups or businesses wish to access them. He questioned whether the information needed to be emailed in all cases. He was of the view that people often only found out about applications via lamp post notices and that this was still a necessary form of consultation.

Councillor Mitchell shared Councillor Hyams' view that letters 'to the occupier' were an anonymous way of trying to contact people within the vicinity of premises which had submitted licensing applications and was perhaps not the most effective method of doing so. It perhaps also depended on the ward where the letters were being sent as St James's Ward had a lot of applications and it was easy for the application/letters to be missed. Mr Simpkin advised that a large number of the consultation letters were returned.

- Councillor Acton made the point that although she was aware of the various ways in which the Licensing Service consulted residents and businesses she had only become aware of an application near to where she lived as a result of receiving a consultation letter. She was of the view that some system should be used to notify people in close proximity to an application, whether this was via letter or e-mail. She wished to retain the lamp post notices as local residents often found out about applications via this route.
- Councillor Harvey recommended retaining all the consultation options until the customer service interface improved. She did not believe there should be a reliance on social media and felt it was important to maintain a 'contract' with residents and businesses.
- Councillor Prendergast and Councillor Gassanly commented that residents were often new to the process and were not aware of how the Licensing Sub-Committee regime operated. There was a question around how residents were informed of their rights and the rights of the other parties. Councillor Prendergast referred to the fact that Richard Brown was residents' best hope of having the position explained to them in respect of applications. She also asked whether consultation letters or the notices on lamp posts could be more eye-catching.
- The Chairman stated that once the consultation had been concluded and the way forward decided upon, it would be helpful if all ward Members sent an alert to the local amenity societies and residents' associations to highlight that if these groups would like specific information on licensing applications they should sign up. She recommended that Licensing News should include short descriptions of the applications referred to there in the same way as the weekly planning list.

7.4 Mr Simpkin wished to emphasise that there was a significant cost and time spent in producing the consultation letters and it could be argued that they were not good value. They were useful to some residents/businesses some of the time. However, a different approach could be to advise residents or businesses how to get hold of specific information. It was still necessary for applicants to put notices up in their premises and in the local paper if they were submitting a licensing application.

7.5 Annette Acik, Head of Licensing, stated that officers were reviewing Licensing News, including the type of information provided and whether the language used was suitable for people who were not familiar with licensing. She was keen to work more closely with library staff so that they were aware of what information could be passed on to relevant stakeholders.

7.6 Councillor Mitchell referred to the fact that he received an alert from the Committee & Governance Services' part of the website when a St James's Ward application was included on an agenda. There should be scope for Licensing News updates to be available via the website. There was potentially not a need for an attachment to be e-mailed. The Chairman stated that it was necessary to make the process easier and more cost effective. Members were recommended to send any additional comments post meeting to Mr Simpkin.

7.7 **RESOLVED:** That in the event that Members had any further comments on the points or questions in the discussion paper, these be forwarded to Mr Simpkin.

8 ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

8.1 The Chairman informed Members that she was working together with Councillor Heather Acton in their capacities as the Cabinet Member for Public Protection and the Cabinet Member for Sustainability and Parking respectively to attempt to address the public nuisance and environmental impact of deliveries via mopeds. Applications for deliveries of food and drink had become more frequent at Sub-Committee meetings over the last year and moped deliveries had been raised as a particular issue in Marylebone and Bayswater. Councillor Acton recommended that Members of the Committee request for each application that those delivering to customers walk, cycle or drive electric vehicles to their destination and not use mopeds. It was understood that in some cases businesses were only prepared to commit to using reasonable endeavours to encourage delivery methods not involving mopeds. This was because they were making the case that the delivery of alcohol was provided by a third party company who were served by third party delivery people. However, there were instances where a firm had more direct responsibility over the delivery drivers and were content to have a condition on their licence that mopeds would not be used, such as a food supplier in Mayfair.

8.2 Councillor Gassanly raised the point that there was a culture where delivery people chose to use mopeds because it enabled them to compete against others providing a similar service and carry out more deliveries.

8.3 Mr Panto was asked for his advice on whether any measures could be taken prior to or after an application being considered from a licensing policy point of view. He made the point that any measures taken would have to tie in with the licensing objectives. He added that any deliveries that did not include alcohol but included hot food or hot drink prior to 23:00 could not be licensed in any event.

9 FUTURE LICENSING COMMITTEE MEETING DATES

9.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 22 March 2017, Wednesday 5 July 2017 and Wednesday 29 November 2017. All meetings are scheduled for 10.00am.

The Meeting ended at 11.34 am

CHAIRMAN: _____

DATE _____