



City of Westminster

# Licensing Committee

<b>Item No:</b>	6
<b>Date:</b>	14 November 2012
<b>Classification:</b>	For General Release
<b>Title of Report:</b>	Licensing Appeals
<b>Report of:</b>	Head of Legal and Democratic Services
<b>Wards involved:</b>	Not applicable
<b>Policy context:</b>	A business like approach
<b>Financial summary:</b>	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 In total, 444 appeals have been received under the Licensing Act 2003. To date, 437 appeals have been heard / settled / withdrawn:

- 14 allowed
- 11 allowed only in part
- 47 dismissed
- 202 withdrawn
- 163 settled

## **4. Licensing Act 2003 Judicial Reviews / Appeals**

4.1 St Martin's Lane Hotel, 42-49 St Martins Lane WC2

An appeal was lodged by the St Martin's Lane Hotel against the decision of the Licensing Sub-Committee of 12 January 2012 who on hearing an application for Review of the premises licence submitted by Environmental Health on the grounds of public nuisance, arising from the operation of a nightclub on the ground floor and basement of the premises, decided to impose conditions which would require the nightclub to cease to operate, and to cut back the hours for all licensable activities to core hours except in the ground floor restaurant where alcohol would be ancillary to dining and a restriction to two bona fide guests for hotel residents given the potential impact of patrons leaving the ground floor south west bar and basement bar areas.

The appeal was scheduled for a ten day hearing commencing on 22 October 2012 through to 2 November 2012. A proposed offer of compromise was received accepting the Committee's decision with respect to the nightclub and offering a terminal hour on Sunday 23.30, Monday to Tuesday 1am and Wednesday to Saturday 2am. The majority of the conditions imposed by the Licensing Sub-Committee at the Review hearing were also accepted by the Appellants. The proposed offer of compromise was referred back to Licensing Sub-Committee for consideration. Authority was granted to settle the appeal and the Appellants agreed to pay the City Council's costs of preparing for the appeal proceedings in the sum of £69,375.

4.2 Altitude 360, 29<sup>th</sup> Floor, Millbank Tower SW1

Altitude 360 is an events / functions space occupying the whole of the 29<sup>th</sup> floor of the Millbank Tower. By application dated 22<sup>nd</sup> December 2011, the Environmental Health Service sought a review of the premises licence in respect of Altitude 360, 29<sup>th</sup> floor, 21-24 Millbank SW1. The review was sought on the grounds of the prevention of public nuisance for the following reasons:

- (i) The commercial occupiers of the 30<sup>th</sup> floor often have to work throughout the night due to the international nature of their work and they are being disturbed by music and noise from Altitude 360 when they are trading.
- (ii) An Environmental Health Officer visited the premises on 28<sup>th</sup> November 2011 as a result of complaints made about the level of noise coming from the

premises and he commented that the event was one of the most extremely loud events he had heard in many months. The noise was so loud that he deemed it appropriate to follow up his visit with the service of a noise abatement notice under section 80 of the Environmental Protection Act 1990.

- (iii) 12 noise nuisance complaints have been received by the Council's noise team specifically about the premises from 30 November 2010 to 15 July 2011.

Representations were received from two local residents supporting the review. A representation in support of the application was also made on behalf of Hellman & Friedman LLP located on the 30<sup>th</sup> floor of Millbank Tower.

The application was considered by the Licensing Sub-Committee on 8 March 2012 and decided to remove Regulated Entertainment from the licensable activities permitted and impose a number of additional conditions on the premises licence.

Notice of appeal was lodged against that decision. A date for the full hearing of the appeal has been scheduled for 12 – 16 November 2012 in the Westminster Magistrates' Court.

#### 4.3 The Windmill, 17-19 Great Windmill Street W1

The Windmill is a lap dancing club located at 17-19 Great Windmill Street W1. An appeal has been lodged against the Licensing Sub-Committee's decision on 8 March 2012 to refuse to vary the premises licence. The variation application sought:

1. To permit regulated entertainment (live music, performance of dance, provision of facilities for making music and provision of facilities for dancing) on Sundays from 09:00 – 05:00  
To extend the hours for regulated entertainment (plays) on Sundays from 09:00 to 05:00 (from 14:00 – 03:00)  
To extend the hours for regulated entertainment (films) on Sundays from 09:00 to 05:00 (from 09:00 – 00:00)
2. To extend the termination hour for sale of alcohol on Sunday from 22:30 to 05:00.
3. To permit Late Night Refreshment on Sunday 23:00 – 05:00.
4. Opening Hours - Sunday 09:00 – 05:30.

Objections to the application were received from Environmental Health, the Metropolitan Police, one local resident and one local amenity society. A date for the full hearing of the appeal is scheduled for 17 January 2013 in the Westminster Magistrates Court.

#### 4.4 Aura, 48-49 St James's Street SW1

Aura is a basement nightclub located at 48-49 St James's Street SW1. This matter is concerned with an application by the Metropolitan Police Service for a Review of the premises licence of Aura, 48-49 St James's Street SW1. The application was made on the grounds of the prevention of crime and disorder, public safety and the prevention of public nuisance. The Police stated that they had been trying to work with the management of the premises to address the incidents that had been occurring within and outside of the premises but despite their efforts there had been no long term visible effect on the reduction of crime and disorder. The Police therefore sought the revocation of the licence.

Representations in support of the application for review were received from the Licensing Authority, Environmental Health, one local resident and the St James's Conservation Trust.

Having considered all of the papers before them and heard from those present at the meeting, the Licensing Sub-Committee decided not to hand down a decision immediately but to advise parties of the decision in writing as soon as possible. On 22 August 2012, the decision of the Licensing Sub-Committee was sent to all parties. The Sub-Committee decided to remove from the licence the unrestricted playing of recorded music and instead permit it only between the hours of 09.00 to 03.00 on Monday to Sunday. The Sub-Committee also imposed a number of additional conditions including no admittance to the premises after 00.00.

Notice of appeal was lodged by the Appellant's against the decision of the Sub-Committee. A date for the full hearing has been scheduled for 25 February to 5 March 2013 in the Westminster Magistrates' Court.

#### 4.5 Metra, Basement, Victory House, 14 Leicester Square WC2

Metra is a nightclub located in Victory House at 14 Leicester Square WC2. This matter is concerned with an application by the Metropolitan Police Service for a Review of the premises licence of Metra, Basement, Victory House, 14 Leicester Square WC2. The application was made on the grounds of the prevention of crime and disorder, public safety and the prevention of public nuisance.

There is an extensive history of incidents or disorder and crime, particularly violent crime, in and / or in the immediate vicinity of the premises. The majority of these took place between 01.00 and 03.00. This continued despite a high level of Police intervention and advice. The Police found it difficult to identify and deal directly with the person or persons who are effectively in control of the premises. Promises made on behalf of the management were not been kept. The incidents demonstrate failings in the management of the premises including inadequate control over admission to the premises, the nature and misconduct of the clientele and the levels of drunkenness permitted or tolerated on the premises. The Police also found that there had been a number of issues with the CCTV at the premises.

Representations in support of review were received from the Licensing Service and from the Environmental Health Service.

Having considered all of the papers before them and heard from those present at the meeting, the Sub-Committee decided that it was appropriate for the licence to be suspended for a period of one month and that following the period of suspension the hours for all licensable activities should be reduced to: Mondays to Saturdays 01.00am with a closing time of 01.30 and on Sundays 23.30 with a closing time of 24.00. The provision of off sales was also removed from the licence. In addition, the Sub-Committee imposed a number of additional conditions to the licence.

Notice of appeal was lodged by the Appellant's and the matter has been listed for full hearing on 8 April to 15 April 2013 in the Westminster Magistrates' Court.

#### 4.6 Lamb & Flag, 24 James Street, Marylebone W2

The Lamb & Flag is a public house located at 24 James Street, Marylebone W2. This matter is concerned with an application made by the Spirit Pub Company (Services) Limited to vary the premises licence for the Lamb and Flag, 24 James Street, Marylebone W2. The variation sought to :

1. Extend the hours for the Sale of Alcohol (on ground and first floor)  
Sunday to Thursday 10.00 to 01.00 and on Friday to Saturday 10.00 to 02.00

2. Extend the hours for the provision of Late Night Refreshment (on ground and first floor)  
Sunday to Thursday 23.00 to 01.30 and on Friday to Saturday 23.00 to 02.30
3. Extend the Opening hours  
Sunday to Thursday 07.00 to 01.30 and on Friday to Saturday 07.00 to 02.30 (on ground and first floor)
4. Remove the Christmas Day and Good Friday restrictions from condition 9 in Annex 1 parts (c) and (d)
5. Add 21 conditions to the licence to support the licensing objectives

Objections to the application were received from Environmental Health, the Metropolitan Police Service, 1 local residents Association, 5 local residents, 1 local business and 1 landlord.

On 5 July 2012, the Sub-Committee considered the application and all representations and decided to refuse the application on the grounds that it would undermine the prevention of public nuisance licensing objective.

Notice of appeal was lodged by the Appellant's and the full hearing of the appeal has been scheduled for 28 to 30 January 2013 in the Westminster Magistrates Court.

## 5. Gambling Act 2005

### 5.1 William Hill (x4 appeals)

Four applications were made under Section 187 of the Gambling Act 2005 to vary the Premises Licences for four William Hill betting shops at the following premises:

1. William Hill, 74 Queensway W2
2. William Hill, 18 Newport Court WC2
3. William Hill, 181 Praed Street W2
4. William Hill, 182-184 Edgware Road W2

Save for the premises at 18 Newport Court, all of the above premises have held Premises Licences under the Gambling Act 2005 since 1 September 2007, prior to which they held licences under the Betting, Gaming and Lotteries Act 1963. The Premises at 18 Newport Court has held a licence under the Gambling Act 2005 since 16 February 2012.

The Premises Licences are subject to the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, of which the default condition states:

*"No facilities for gambling shall be provided on the premises between the hours of 10pm on one day and 7am on the next day."*

The four applications sought to remove this condition and replace it with another permitting a terminal hour of midnight.

Representations against the applications were received for each of the premises as follows:

Premises	No. of Reps	Details of Reps
1. William Hill, 74 Queensway W2	x2	1. Mr John Zamit from the South East Bayswater Residents Association 2. Mr Neville Andrews
2. William Hill, 18 Newport Court WC2	x2	1. Mr Simon Thomas of the Hippodrome Casino, Leicester Square 2. Ms Christine Yau, Chinese

		Community Centre
3. William Hill, 181 Praed Street W2	x2	1. Mr John Zamit, from the South East Bayswater Residents Association 2. Ms Karen Scarborough from the Hyde Park Estates Association
4. William Hill, 182-184 Edgware Road W2	x1	1. Mr Khalid Ahmad

The applications were considered by the Licensing Sub-Committee on 17 July 2012. The Sub-Committee refused the applications having found no overwhelming evidence to merit the extension in hours.

Notice of appeals were received against each of the decisions and four appeals have been listed to run concurrently on 18 to 22 February 2013 in the Westminster Magistrates' Court. A proposed offer of compromise has been received from the Appellants in respect of these applications and it is proposed to put the matter back to the Licensing Sub-Committee for consideration.

## **6. Judicial Reviews / Case Stated**

### **6.1 Vendome, 85 Piccadilly W1 – Judicial Review & Case Stated**

Vendome was a basement nightclub located at 85 Piccadilly W1. Further to the dismissal, on 7 November 2011, of the two appeals in respect of the above premises against the 1) revocation of the licence and 2) refusal to transfer the licence, a request was made by the Appellant's to the Magistrates' Court for the District Judge to state a case for the opinion of the High Court. The Magistrates' Court issued its final case stated which was referred to the High Court.

In addition to the case stated, the Claimant's also lodged an application for permission for judicial review of the decision.

Having considered both matters on papers, the High Court advised parties that a half day hearing would take place to consider whether the Claimants should have permission to apply for Judicial Review and whether the case stated application should be remitted to the District Judge.

That hearing took place at the High Court in the afternoon of 18 September 2012 before Mrs Justice Lang. David Matthias QC represented the City Council. Gerald Gouriet QC represented the Claimants. Having heard from both parties and considered the written submissions, Mrs Justice Lang advised that her decision was to refuse permission to appeal by way of Judicial Review. The City Council were awarded their costs of filing the acknowledgement of service in the sum of £5,415.18.

Mrs Justice Lang then moved on to deal with the application by E&A for appeal by way of case stated. She ordered that the case stated by the District Judge be returned to him to amend in accordance with her directions so as include additional facts and evidence as to how he arrived at his decision. The District Judge will have 28 days in which to amend his Judgment in accordance with the directions of Mrs Justice Lang.

The District Judge has now restated his case and answered the questions posed by Mrs Justice Lang the case stated has been referred back to the High Court. A hearing will now be arranged in the High Court to determine the matter. It is not expected that the matter be listed in the Court until mid 2013.

## 6.2 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 have granted permission to appeal and the matter is listed for a one day hearing on 14 January 2013.

Letters advising of the potential implications of the case and seeking support in defending the claim have been sent to the Leaders of all major metropolitan authorities, to the Chief Executives of certain regulatory bodies, and to government departments (The Home Office, BIS and DCMS).

## 7. **City of Westminster Act 1999 Appeals**

### 7.1 Pitch 570, 571, 705 & 706 Church Street Market

An appeal has been lodged by Mr Anthony Dwyer against the decision of the Licensing Officer Panel to revoke his street trading licences in respect of Pitch 570, 571, 705 and 706 Church Street Market on the basis of persistent non-payment of street trading charges. Mr Dwyer has a long history of significant arrears despite numerous warnings. The full hearing of that appeal was heard in the Westminster Magistrates' Court on 14 December 2011. The appeal was dismissed and costs were awarded to the City Council. Mr Dwyer lodged an appeal to the Crown Court which was heard on 1 June 2012 in Southwark Crown Court. Having heard from Mr Dwyer and Mr Dwyer's mother regarding Mr Dwyer's gambling addiction, the breakdown of his marriage and of medication prescribed for depression, the Judge seemed to have sympathy with Mr Dwyer. The Court heard from Mr Dwyer's mother how she would guarantee that the fees would be paid in future. The Judge said that he was prepared to adjourn the matter until 19 October at 2pm. He said that in the meantime, Mr Dwyer should pay his monthly fees in advance of when they are due. The Judge also ordered that Mr Dwyer was to pay all of our outstanding court costs (£3,629.80 in the magistrates' court and £2,466.70 in the Crown Court totalling £6,096.50) prior to returning to the next court date on 19 October. Mr Dwyer cleared all of his arrears on his account and paid the costs orders from the Magistrates' and the Crown Court. In view of the Judge's comments at the previous Crown Court hearing, it was agreed that the appeal should be settled and Mr Dwyer be permitted to continue trading. Costs were again awarded against Mr Dwyer in the sum of £797.50.

### 7.2 Pitch 707 and 708 Church Street Market

An appeal was been lodged by Mr Brown against the decision of the Licensing Officer Panel to revoke his street trading licences in respect of Pitch 707 and 708 Church Street Market for persistent non-payment of his street trading charges. The full hearing of the appeal took place on 15 October 2012 in the Westminster Magistrates' Court. The Council was represented by Annabel Graham Paul of Counsel, the

Appellant was unrepresented. Having considered all evidence placed before him, the District Judge upheld the decision of the Licensing Officer Panel and dismissed the appeal. Costs were awarded to the City Council in the sum of £500. Mr Brown has since lodged an appeal to the Crown Court.

**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](mailto:plarge@westminster.gov.uk)

**Background Papers**

- None.