



City of Westminster

Minutes

Meeting:

Licensing Committee

Date of meeting:

Wednesday 20 March 2013 at City Hall, 64 Victoria Street, London, SW1E 6QP

Attendees:

Councillors: **Audrey Lewis (Chairman)**
Ahmed Abdel-Hamid
Alan Bradley
Michael Brahams
Susie Burbridge
Melvyn Caplan
Nicholas Evans
Jean-Paul Floru
Lindsey Hall
Gwyneth Hampson
Andrew Havery
Patricia McAllister
Tim Mitchell

Apologies:

Councillors Jan Prendergast and Aziz Toki.

Contact:

Jonathan Deacon
Senior Committee and Governance Officer

Details:

Tel: 020 7641 2783
Email: jdeacon@westminster.gov.uk

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 14 November 2012 were agreed as a correct record and were signed by the Chairman. The Chairman confirmed in respect of paragraph 5.1 and paragraph 5.2 of the minutes that she had indeed given evidence to the West End Commission and also that a licensing analyst had now been appointed.

3. LIVE MUSIC ACT AND DEREGULATION OF ENTERTAINMENT PROPOSALS

3.1 Mr Wroe, Licensing Policy and Strategy Manager, provided a summary of the measures in the Live Music Act 2012 and the DCMS' deregulation of entertainment proposals. The Live Music Act measures had been in force since Autumn 2012. The Government had over a period of time been looking to remove regulation which it believed was unnecessary. There was a live music lobby which made the case that licensing regulation hindered their ability to provide live music at venues which were not causing problems. The Live Music Act had been a Private Members' Bill which became an Act of Parliament.

3.2 Mr Wroe stated that the deregulation set out in the Live Music Act generally applied between 8am and 11pm. A distinction had been made between unamplified and amplified music. If it was unamplified, there was not a requirement to licence it. If it was amplified, live music would not be licensed provided the audience was not in excess of 200 people and the premises were open for the purpose of supplying alcohol for consumption on the premises authorised under the 2003 Act by a premises licence or a club premises certificate. An exemption also applied where the music is before an audience of no more than 200 people and the venue is a workplace not licensed under the 2003 Act. Mr Wroe commented that workplaces included almost anywhere that was not a private dwelling. Where live music had been deregulated and was no longer subject to licensing control, any conditions on an existing licence which related to live music would cease to have effect in relation to this activity. There was the option to review premises licences if live music was causing a public nuisance issue and the previous live music conditions which had ceased to have an effect could be re-introduced by the Sub-Committee as part of the review. The provision of entertainment facilities was no longer a licensable activity.

3.3 Mr Wroe informed Members that in the Summer of 2012 the DCMS had published a discussion document which would further deregulate and review all licensable activities. In January 2013 the Government published its response to the consultation responses and set out its proposals. The DCMS was of the view that a performance of a play or a performance of dance was a low risk activity. It was proposed that these activities would be deregulated

between 8am and 11pm where the audience is no more than 500 persons. For indoor sport, activity would be deregulated for these hours where the audience is no more than 1000 persons. Indoor sport was not licensable already if there was no audience present. Rather than the existing exemption for recorded music under the Live Music Act for an audience of no more than 200 persons, it was proposed by the DCMS that this would apply to no more than 500 persons in premises which are open for the purpose of supplying alcohol for consumption on the premises, authorised under the 2003 Act by a premises licence or a club premises certificate. Exemptions under the 2003 Act also applied to activities between 8am and 11pm held on their own premises by local hospitals, hospitals, nurseries and schools and for live and recorded music activities for audiences up to 500 persons at these locations. The DCMS intended to provide guidance for deregulating plays, dance, sport, live and recorded music by April 2013. The Government was likely to consult later in the year on community film deregulation proposals to examine the possibilities for safe community focussed screenings that maintain important child safety protections. The definition of boxing or wrestling entertainment would be clarified so as to exclude the Olympic sports of Greco-Roman and Freestyle wrestling, and to include cage fighting and mixed martial arts. Guidance for film, boxing and wrestling was likely to be produced by DCMS in approximately 12 months' time. Mr Wroe made the point that Members should be aware that community centres would be exempt which would include premises such as Westminster Cathedral Hall which had had an application considered by the Sub-Committee. The DCMS had only set out the broad intention of the proposals to date.

- 3.4 Councillor Bradley asked what Westminster's comments had been in response to the DCMS' deregulation of entertainment proposals. The Chairman replied that the Council had wished to defend regulation. There was a particular concern about the effect of sound systems at the Notting Hill Carnival. The Council had a preference for measures in the Live Music Act. The aim was not to have unnecessary regulation but to maintain it for larger events where there was the potential for public nuisance. Mr Wroe added that part of the reasoning for deregulating licensed premises was that the Local Authority still had the ability to condition premises requiring an alcohol licence. However, there were concerns that the Council would not be able to prevent certain issues from arising. There was a wide definition of workplaces which meant that offices could be used for events or even beer gardens and areas outside pubs. Peter Large, Head of Legal and Democratic Services, commented that DCMS representatives had suggested that the Licensing Authority had sufficient controls in the event of the proposals becoming law as they would still have the ability to condition premises requiring an alcohol licence. He believed this view was incorrect. Most nightclubs in the West End had a capacity of less than 500 and it would not be possible to regulate between 8am and 11pm except by attaching conditions relating to the sale of alcohol which lawyers would say should not be attached if DCMS had just deregulated the activity.
- 3.5 Councillor Mitchell asked how it would be possible to effectively enforce or prosecute if there was noise nuisance. Andrew Ralph, Service Manager -

Noise & Licensing, advised that if the live music was sufficiently loud and could be witnessed from a complainant's home it would be possible to prosecute. Mr Wroe made the point that the Members of the Sub-Committee would not receive any applications relating to live music. Previously Members would see what was intended overall in an application but now they would only see an application for the sale of alcohol. Members would be able to inform residents that they still had the ability to review premises licences if there were issues at a venue.

3.6 Members considered that planning should be made aware of the lack of regulation at premises with live music and take that into account when looking at a new planning application. Councillor Hampson stated that at a recent hearing the Applicant had agreed an informal undertaking that live music would not take place after 10pm. The Chairman commented that unfortunately these were not legally binding and some would honour the undertakings and others would not. Councillor Hall expressed concerns as to whether Environmental Health would be alerted if aspects of an application had been deregulated. The Chairman stated that the Committee would have a better idea of the answers to a number of their questions when DCMS' guidance was published.

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

4. REVIEW THRESHOLD

4.1 The Chairman stated that for some time it had been necessary to have a clearer understanding with the Police regarding the threshold point when reviews would be submitted on the grounds of crime and disorder. This matter had been briefly discussed at the previous Licensing Committee in November 2012 and she had since raised it at a meeting of Council. The Licensing Authority was able, following a change to the legislation, to bring a review on the grounds of crime and disorder but this was not nearly so effective if it did not have the backing of the Police. It appeared to be the case that the Police would submit an expedited review when there was a specific incident at a venue such as a serious injury. However, where there were venues that were blighted by drunkenness, disorder or thefts over a number of years, the Police were often advised by their lawyers to continue to work with the management and not bring a review. The Police had no reason to be concerned about bringing reviews as ultimately it was the Licensing Authority that would need to defend any decisions taken, particularly if a review application was appealed. The Chairman advised that Mr Large had put together a draft document setting out a protocol on the use of review with the priorities and threshold for action. If Members of the Committee were content with the principles set out in the draft document she intended to discuss it with the recently appointed Police Borough Commander for Westminster, Steve Osborn.

4.2 Members of the Committee were agreed that the draft protocol was a helpful and useful document. Councillor Brahams considered it excellent and asked whether it was thought that the principles set out in the document would be

effective in the event of an appeal. Mr Large replied that the priority was for appropriate cases for review to be brought before elected Members of the Licensing Sub-Committee rather than assisting the case at appeal. If and when the document was agreed with the Responsible Authorities as a whole and not only the Police, it would be placed in the public domain.

4.3 The Chairman stated that she had concerns that the Police did not consider anti-social behaviour a priority and asked Members to let her know if they felt that the draft document did not emphasise sufficiently that combating anti-social behaviour was a priority. It was agreed that the Chairman would be advised in the event of any suggested amendments to the protocol document by Members of the Committee.

4.4 **RESOLVED:** That the Chairman be advised in the event of any suggested amendments to the draft protocol document by Members of the Committee.

5. PROMOTING ANIMAL WELFARE FOR PERFORMING ANIMALS WITHIN WESTMINSTER

5.1 Mr Steve Rowe, Environmental Health Case Officer, advised the Committee that the issuing of Performing Animal Registrations under the provisions of the Performing Animals (Regulation) Act was one of the Council's smaller licensing regimes. Five licences had been issued under the 1925 Act during the last 12 months. The Council had been in contact with the RSPCA who had found that there was insufficient guidance relating to the welfare of animals available to those involved with performing animals such as the registered persons and the venues. Mr Rowe stated that the RSPCA had now produced the document 'Guidelines for the Welfare of Performing Animals' which had been included in the agenda papers and it was suggested that this was included on the Council's website. Potentially the guidance document would also be given to the Council's Special Events Team who would provide the guidelines to event organisers and theatres and it would be promoted by the City of London Vet. Mr Rowe confirmed that when an event was held licensing officers at the Council spoke to the City of London vet who was contracted to oversee the welfare of the animals. The vet contacted the event organisers as part of this process.

5.2 The Committee was agreed that it would be a good idea for the guidance document to be placed on the Council's website. Members of the Committee did not wholly agree with the concept of actively promoting the guidance to performance venues which some Members felt went beyond bringing people's attention to it in the event of the document being on the website and resulted in officers taking on an additional level of responsibility or bureaucracy which was not believed to be necessary.

5.3 **RESOLVED:** That the RSPCA Guidelines for the Welfare of Performing Animals document be made available on the Council's website.

6. DCMS PUBLIC CONSULTATION ON THE PROPOSALS FOR CHANGES TO MAXIMUM STAKE AND PRIZE LIMITS FOR CATEGORY B, C and D GAMING MACHINES

- 6.1 The Sub-Committee received a brief summary from Nick Nelson, Environmental Health Case Officer, of the Department for Culture, Media and Sport's ('DCMS') consultation paper on the proposed changes to the maximum stake and prize limits for gaming machines. This was the first of DCMS' triennial reviews of the stake and prize limits. DCMS were arguing that the growth of the gaming industry should be supported. They were making the case that there was no solid evidence of problems caused by gaming machines. Mr Nelson and Kerry Simpkin, Assistant Service Manager, added that DCMS was proposing that research would be carried out by the Responsible Gaming Trust which was funded by the Gambling Commission although deemed to be independent. The Committee's views were sought.
- 6.2 The Committee agreed the Chairman's proposal that until there was evidence to demonstrate that gaming machines did not have an adverse impact it was not appropriate to increase the maximum stake and prize limits. A number of Members expressed concerns in respect of gaming machines. The Chairman stated that she was aware of a growing concern regarding the spread of gaming machines in betting shops which it was felt made it easier for gaming addicts to indulge and resulted in people congregating near the shops, including in Harrow Road. The Chinese community felt especially vulnerable. The proliferation of these premises was seen to be a problem as was the concept that rather than betting on events which had been the common practice in betting shops, gamblers were betting purely on chance when playing on gaming machines. However, at the moment there was not deemed to be strong enough evidence to object to gaming machines at betting shops and there was a presumption under the Gambling Act legislation to grant betting shop applications. DCMS' report had set out that 50% of profits from the shops resulted from gaming machines. The Council had recently hosted a Gambling Commission workshop on gaming machines and 140 people had attended. There was also a Member led working group at the Council looking at betting shops.
- 6.3 Councillor McAllister referred to research that had been commissioned in Australia and the United States. She commented that in Australia it had been found that the noise accompanying a win or a near win on a gaming machine resulted in addiction as it created a 'high' caused by adrenalin. She was of the view that the machines in Harrow Road caused problems to the community. The Chairman responded that the research in other countries was not accepted by DCMS and the Gambling Act promoted gambling. She found it concerning that as a result of turnover in the industry being slightly down the DCMS's solution was to raise the stakes.
- 6.4 Councillor Mitchell stated that gambling machines caused issues in the ward he represented, St James's. Each betting shop was restricted to 4 gaming machines which led to more betting shop premises. He was concerned about the retail mix. It was possible to lose hundreds of pounds within seconds

electronically on a gaming machine whereas approximately two minutes elapsed between each spin of a roulette wheel. In the Chinese community, poorer paid workers in a number of cases gambled away their weekly wages. Traditionally betting shops had relied on horse racing which did involve chance but also had a degree of science. Gambling machines, however, involved pure chance. There were less staff required with gambling machines than traditional forms of betting which potentially risked higher levels of crime and disorder. The proliferation of gaming machines meant that the shops were no longer predominantly betting ones but more like amusement arcades which had caused issues in the past but had largely been removed as a result of changes to society and regeneration projects. Councillor Caplan added that the rise of online betting meant that many had accounts on the internet for horse racing and other sports and did not need to go to the betting shops. The Government tax take had reduced as the betting companies moved to tax havens. This meant that additional income would be sought via gaming machines.

6.5 Councillor Floru stated that he agreed that evidence was required on gaming machines. This should be independent scientific evidence which was not supplied by those with a specific viewpoint or vested interest. He expressed the view that gambling was demand driven and that if betting shops were restricted, gambling would be transferred to an online platform or to the lottery. People were addicted to many things but this did not mean that they should all be outlawed. Councillor Brahams had concerns that the Government was pandering to the gaming industry but commented that the reason there had been a need for betting shops was that betting had previously taken place illegally.

6.6 **RESOLVED:** That a response be provided by the Council to the DCMS' consultation paper that until there is evidence to demonstrate that gaming machines do not have an adverse impact it is not appropriate to increase the maximum stake and prize limits.

7. **SCRAP METAL DEALERS ACT**

7.1 Mr Simpkin introduced the item. He stated that there was a growing problem with metal thefts across the country, including from churches and school buildings. The Home Office was keen to tackle the issues relating to this. The Scrap Metal Dealers Act 2013 had been passed in February and was due to come into force in October 2013. It would replace the previous legislation and would give local authorities and Police more powers to refuse and revoke scrap metal licences as well as greater rights of entry and inspection. Metal thefts were less of an issue in Westminster than the country as a whole. There had been 41 reported crimes within the last 12 months associated with theft and criminal damage related to attempted metal thefts.

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

8. LICENSING APPEALS

8.1 Mr Large provided Members with an update on licensing appeals since the previous meeting of the Committee in November 2012 as follows:

- an appeal against the decision of the Sub-Committee in respect of The Windmill in Great Windmill Street had been dismissed and costs had been awarded to the City Council.
- a decision by the Licensing Sub-Committee in respect of Metra in Leicester Square had been appealed. However, the premises had since closed and the Appellant had not served evidence. The matter was listed to be heard on 4 April.
- the appeal judgment for Aura in St James's Street was due to be received in early April.
- an appeal against the decision of the Sub-Committee in respect of Quintessentially Group in Portland Place was currently being heard in Westminster Magistrates' Court.
- an appeal against the Licensing Sub-Committee's decision for Cherry Jam in Porchester Road had been appealed and was due to be heard at the end of May in Westminster Magistrates' Court.
- a judgment was expected in the near future in respect of the Council's appeal against aspects of the High Court's decision relating to the judicial review challenging the legality of the fee charged by the Council for a sex establishment licence.
- judgment had been received dismissing an appeal lodged by Mr Anthony Beattie against the decision of the Licensing Sub-Committee to refuse a new design of receptacle for Pitch 1794 James Street.

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

9. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

9.1 Councillor Bradley requested that Members of the Licensing Sub-Committee were provided with planning position information for the premises that were the subject of licensing applications. He also commented that it was equally important that the licensing position was set out for all premises that were the subject of planning applications. Members of the Committee appreciated the points that planning officers were consulted by environmental health case officers on licensing applications and that it was not always possible for officers in planning or licensing to obtain all the necessary information from the Uniform software. This information needed to be more easily accessible. However Members were of the view that it was necessary in cases where the required information was not forthcoming for environmental health case officers to be proactive and follow this up with planning officers in order to obtain the planning details for the Sub-Committee.

9.2 Councillor Havery asked that a clearer numbering system was used for the proposed list of conditions at Licensing Sub-Committee meetings. He suggested the same number in Appendix D of the report should include any variations to a similar condition put forward by the parties such as the Applicant, Responsible Authorities or local residents (for instance 12a could

refer to the Applicant's suggested condition, 12b could refer to Environmental Health's suggested version and 12c the Police and 12d local residents). This would prevent Members and officers having to identify the duplication of conditions at a Sub-Committee hearing.

10. FUTURE LICENSING COMMITTEE MEETING DATES

- 10.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 10 July 2013 at 10.00am and Wednesday 20 November 2013 at 10.00am.

11. CLOSE OF MEETING

- 11.1 The meeting ended at 12.04pm.

Chairman

Date