



City of Westminster

# Licensing Committee

<b>Item No:</b>	5
<b>Date:</b>	26 June 2013
<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
<b>Report Author:</b>	Peter Large, Head of Legal and Democratic Services
<b>Contact details</b>	Tel: 020 7641 2711 Email: <a href="mailto:plarge@westminster.gov.uk">plarge@westminster.gov.uk</a>

## **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, 447 appeals have been received under the Licensing Act 2003. To date, 442 appeals have been heard / settled / withdrawn:

- 15 allowed
- 11 allowed only in part
- 51 dismissed
- 202 withdrawn
- 163 settled

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

### **4.1 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.

The application was considered by the Licensing Sub-Committee on 16 August 2012. 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.

A Pre Trial Review was held on Monday 4 February 2013 at the request of the Appellant in order to review the time set for the full hearing. The Appellant was represented by Philip Kolvin QC, the Respondent was represented by David Matthias QC. The Appellant argued that the hearing currently scheduled for 7 days need only last 2 to 3 days. He argued that the points in issue were very narrow and should not take 7 days of the Court time. The District Judge said that in his experience such cases actually ran over and that he was minded to retain the 7 day listing. The matter

therefore commenced on 25 February and ran through to 5 March 2013. Judgment was reserved and has now been received dismissing the appeal. Costs are now being sought.

The appellant has now applied for permission to judicially review the District Judge's decision to dismiss the appeal, on the basis that his decision was not supported by the evidence and was perverse. He has also applied for a stay of the District Judge's decision, pending determination of the application. The application for a stay was granted by the High Court without the City Council having been given an opportunity to make representations, so at present the decision of the Sub-Committee, upheld by the District Judge, is now no longer in effect.

Detailed Grounds of resistance to the application have been filed, and an application for a lifting of the stay has been submitted. We are seeking information from the police relating to recent incidents at the premises.

#### 4.2 Metra, Basement, Victory House, 14 Leicester Square WC2 (x 2 appeals)

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.

The Licensing Sub-Committee hearing took place on 14 August 2012. 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.

A second appeal was then received against the decision of the Licensing Sub-Committee on 17 December 2012 in respect of an application for an expedited review following a further serious incident at the premises. The Sub-Committee imposed the same hours as had previously been imposed at the interim steps hearing in November 2012 (licensable activities reduced to 1am on Monday to Saturday and Sunday's 23.30). Metra closed in December 2012 and has not operated since. A Case Management Hearing was held at the end of January whereby it was agreed that the two appeals should be joined to be heard together. An additional day was added for the full hearing which would commence on 4 April and then run from 8 April to 15 April.

At the request of the Appellant, a preliminary hearing was then held on 7 February 2013 to request the Court to make a preliminary ruling on whether interim steps imposed pending the determination of an application for summary review continue to apply after that determination. Philip Kolvin QC represented the Appellant. David Matthias QC represented the Respondent, and submitted that the magistrates' court had no jurisdiction to entertain an appeal against an interim steps decision, or to make the ruling sought. The District Judge ruled that the application by the Appellant for the preliminary hearing was misconceived. He awarded costs in full to the Respondent for the preparation for and attendance at the preliminary hearing. An additional day was set for the full hearing so as to commence on 4 April and then continue on 8<sup>th</sup> to 15<sup>th</sup> April. Messrs Davenport Lyons subsequently advised that they were no longer instructed in the matter.

A Case Management Hearing was held on 10 March 2013 at the request of the Respondent due to the Appellant not complying with any of the Court Directions regarding exchange of evidence. The District Judge barred the Appellant from putting forward any evidence or making submissions at the full hearing. The appeal commenced on 4 April 2013. Counsel instructed by appellant applied for an adjournment of the hearing on the basis that she had only just been instructed. That application was refused. She applied for permission to rely upon a short statement from a director of the appellant company which had been served upon the Council the previous evening. That application was also refused. In light of the ruling made on 10 March 2013, the District Judge dismissed the appeal. Costs are now being sought from the appellant company, and a former director and a current director personally, and a wasted costs order has been sought against the appellant's legal representatives.

A costs hearing in relation to the City Council's applications for costs against those parties took place on 14 May before DJ Snow, and judgment was reserved and handed down on 22 May. District Judge Snow awarded Westminster its full costs. He awarded costs of £27,724.20 against Dr Lit, £25,000 against Mrs Rashid and £46,237 against the Appellant on a joint or several liability basis.

#### 4.3 Quintessentially Group, 29 Portland Place W1

29 Portland Place is currently used as office accommodation. By application received on 2 August 2012, Quintessentially (UK) Ltd applied for a new premises licence for the ground and first floor of 29 Portland Place so as to operate as a private members dining club for pre booked events and parties. The application sought regulated entertainment (indoors) Monday to Saturday to 23.30 and Sunday to 22.30; late night refreshment (indoors) Sunday to Thursday to 23.30 and Friday to Saturday to 00.00 and the sale of alcohol (on the premises) Monday to Saturday to 23.30 and on Sunday to 22.30. The application received objections from Environmental Health, 2 local businesses and 26 local residents. On 27 September 2012 the application was considered by the Licensing Sub-Committee and refused the application due to a lack of confidence that the applicant would promote the licensing objectives, particularly the prevention of public nuisance.

Notice of appeal was lodged against that decision and a date for the full hearing was heard on 18 March to 21 March 2013 in the Westminster Magistrates' Court. A large number of residents attended court and addressed the District Judge as to the noise nuisance and disturbance that they had suffered when events had taken place at 29 Portland Place. Judgment was reserved and was handed down on 26 April. The District Judge dismissed the appeal and full costs were awarded to the City Council.

#### 4.4 Cherry Jam, 58 Porchester Road W2

Cherry Jam is a basement bar and nightclub situated at 58 Porchester Road W2 which benefits from a premises licence permitting a capacity of 110 for the sale by retail of alcohol on Monday to Saturday to 1.30am and on Sunday to 23.30; regulated entertainment to 1.30am on Monday to Saturday and midnight on Sunday and late night refreshment on Monday to Saturday to 2am and on Sunday to midnight. By application dated 11 September 2012 the Licensing Authority (Enforcement Section) sought a review of the premises licence on the grounds of the prevention of public nuisance. The decision to apply for a review of the premises licence followed many years of noise complaints from local residents regarding the noise and anti social behaviour of patrons whilst at the premises and when leaving the club. Representations in support of the application for review were received from Environmental Health, two local Councillors, two resident's associations, one local business and 39 local residents. On 8 November 2012 the application was considered by the Licensing Sub-Committee who cut back the terminal hours for licensable activities so that the sale of alcohol would cease at 11.30pm Sunday to Thursday and all other licensable activities would cease at midnight. On Friday and Saturday the sale of alcohol would cease at midnight and all other licensable activities would conclude at 12.30.

Notice of appeal was lodged against that decision. The full hearing of the appeal took place on 28 May to 30 May 2013 in Westminster Magistrates Court.

It was an unusual feature of this case that we had no evidence of any problems between the Sub-Committee hearing on the Review application and the appeal hearing. The appellant's case was that the premises had changed hands and was operating in a significantly different way, so that previous problems had been overcome. We argued that the premises were on their best behaviour in the run up to the appeal hearing and that there could be no guarantee that they would continue to operate in the same way, especially as it didn't make commercial sense. The District Judge was persuaded by the appellant's argument, although she accepted that the Sub-Committee decision was not wrong at the time it was taken.

It was another unusual feature of the case that the District Judge did not hear any oral evidence from the witnesses who attended to give evidence for us. She ruled that witness statement should be taken as read and could not be added to. Once he had got that ruling Counsel for the appellant, Michael Bromley Martin, indicated that he had no cross-examination. That was a rather high risk tactic, since it meant all our evidence was unchallenged, but it had the advantage from his perspective that none of the residents had the opportunity to speak, and it paid off. Judgment was handed down 10 June 2013 allowing the appeal. The Appellant's applied for their costs of the appeal hearing, the District Judge made no order for costs on the basis that the decision of the Licensing Sub-Committee was correct at the time and that the City Council were right to defend the appeal.

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

#### 5.1 Ida Perotti – Application for Permission for Judicial Review

This is a renewed application for permission to judicially review the decision of the City Council not to instigate a review of the premises licence of Jeglag Bar at 125 Cleveland Street, London. The purported claimant in this case is a 95 year old Italian lady who does not read or write any English. The actual claimant in this case is her son Mr Angela Perotti, who is on the court's list of vexatious litigants and is, as a result, forbidden from issuing civil proceedings in any court in England and Wales without the permission of the High Court.

Permission for Judicial Review was refused on the papers by the High Court in August 2012. In refusing permission, Mr Justice Edwards-Stuart described the application in the following terms:

“This application is completely misconceived and is therefore totally without merit. It is also an abuse of the process of the court.”

An oral hearing in the Administrative Court was held on 18 December 2012 before Mr Justice Underhill. Mr Perotti represented his mother at the hearing, his mother was not in attendance. Isabella Tafur represented Westminster City Council. At the outset of the hearing, Mr Perotti applied to the Court for an adjournment to enable his mother to seek legal representation. That application was refused and the hearing continued. Having heard in some detail from Mr Perotti, Mr Justice Underhill refused permission to appeal and ordered costs against Mr Perotti personally.

Mr Perotti has now applied to the Court of Appeal for permission to appeal against the refusal of the application for adjournment and against the costs order made against him. The application for permission to appeal will be considered initially on papers and parties notified of the decision in writing.

## 5.2 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 the Autumn of 2013.

## 5.3 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, pending further lobbying for support from other licensing authorities, other regulatory bodies, and central government.

#### 5.4 Lane Bednash (as administrator of Le Pigalle Limited) and David West

An application for permission to bring a claim for Judicial Review has been received from the Lane Bednash (administrator of Le Pigalle Limited) and David West Jnr.

The application relates to the refusal of the Council to treat a transfer application made by the administrators of Le Pigalle Limited as valid. The transfer application was made by the administrators in order to prevent the existing licence lapsing following the insolvency of Le Pigalle Limited. Such an application must be made within a period beginning with the day on which an interim authority notice was received by the licensing authority and ending three months after that date. The issue arising in the claim is whether the transfer application was received within that period, and if not whether the licensing authority has any discretion to extend the time limit.

Detailed grounds of response opposing the grant of permission for judicial review were filed with the Administrative Court. An Order of Mr Justice Baker has now been received refusing permission for Judicial Review and confirming that "...As the consequence of the failure to make a transfer application within the interim authority period is that the premises licence lapses, it is unarguable that the defendant retained the power to grant the transfer". The Court further ordered that the Claimant pay the full costs of the City Council.

## 6. City of Westminster Act 1999 Appeals

### 6.1 Pitch 1794 James Street (Mr Beattie)

An appeal was lodged by Mr Anthony Beattie against the decision of the Licensing Sub-Committee on 19 April 2012 to refuse to approve a new design of receptacle for

his street trading pitch – Pitch 1794 James Street, WC2. The Sub-Committee refused the application on the grounds that it would be detrimental to the character and appearance of the Covent Garden Conservation Area and the setting of listed buildings in the street and in the Piazza beyond. It was noted by the Sub-Committee that other designs were readily available for purchase which were suitable for the location.

The appeal was heard on 19 and 20 December 2012 in the Westminster Magistrates' Court before District Judge Roscoe. Niall Blackie of FBC Manby Bowdler represented Mr Beattie. David Matthias QC represented Westminster City Council. In addition to the evidence of Mr Beattie, the appellant called two witnesses – Omar Alim, stall designer and Roger Tweedale of Tweedale Planning and Design. The City Council called evidence from Chris Mason and Sarah Lane of the Covent Garden Area Trust. Having heard all of the evidence, District Judge Roscoe adjourned the hearing for Judgment to be handed down in the New Year. Judgment was received dismissing the appeal. Judgment in respect of the first appeal was subsequently handed down on 10 April, to come into effect on 10 October, with each side being ordered to bear their own costs.

## 6.2 Pitch 669 Church Street Market (Mr Hadji)

An appeal was lodged by Mr Djamel Hadji against the decision of the Licensing Officer Panel on 27 November 2012 to revoke his street trading licence for persistent non payment of his street trading charges. As at the date of the Panel hearing, Mr Hadji's arrears stood at £485.76. The full hearing of the appeal was heard on 23 May 2013 in Westminster Magistrates' Court. During the appeal period, Mr Hadji had cleared all of the arrears on his account and had set up a direct debit for payment of his monthly fees and charges. Mr Hadji acknowledged that he had allowed substantial debt to build up on his account and that he had failed to pay his fees and charges when due. He asked the Court for a further opportunity to demonstrate that he could now be trusted to keep his account up to date. Whilst acknowledging Mr Hadji's attempts to clear his account, the Court were of the opinion that the Council were right to revoke his street trading licence. The appeal was therefore dismissed. Mr Hadji has advised that he intends to appeal to the Crown Court however no appeal has yet been received.

## **7. Legal implications**

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

## **8. Staffing implications**

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

## **9. Business plan implications**

9.1 There are no business plan implications arising from this report.

## **10. Ward member comments**

10.1. As this report covers all wards, comments were not sought.



## 11. Reason for decision

11.1 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.