



CITY OF WESTMINSTER

MINUTES

Licensing Committee

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Committee** held on **Wednesday 9th March, 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, Rita Begum, Melvyn Caplan, Nick Evans, Peter Freeman, Murad Gassanly, Angela Harvey, Louise Hyams, Tim Mitchell, Jan Prendergast, Shamim Talukder and Aziz Toki

Apologies for Absence: Councillor Susie Burbridge and Councillor Jean-Paul Floru

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 18 November 2015 were agreed as a correct record and were signed by the Chairman.

2.2 The current meeting had been preceded by a refresher licensing training session for Members of the Committee provided by Chris Wroe, Licensing Policy & Strategy Manager and Barry Panto, Senior Assistant Solicitor. This had been agreed at the Licensing Committee meeting in November 2015. The Chairman stated that the training session had been useful and it was important that it was scheduled on an annual basis. It gave Members the opportunity to share their experiences and raise matters in relation to Licensing Sub-Committee applications which they had considered.

3 WESTMINSTER CITIZENS ADVICE BUREAU LICENSING PROJECT ACTIVITY REPORT 2015

3.1 The Chairman introduced Mr Richard Brown, a solicitor specialising in licensing law, who manages the Citizens Advice Bureau Licensing Advice Project. She referred to the excellent service he was able to provide to local residents, including representing them at Licensing Sub-Committee meetings.

This service was subsidised by the Council. Applicants often had experienced legal teams to represent them and that without Mr Brown's assistance residents had the burden of putting forward their own cases in response. His involvement was also of benefit to the Committee in terms of concisely setting out the case of interested parties.

- 3.2 Mr Brown explained to Members of the Committee the work of the Project, including the activities undertaken during 2015 as set out in his report. The Project provided advice, assistance, information and representation to residents and businesses in respect of their rights and responsibilities under a range of licensing legislation, principally Licensing Act 2003, Gambling Act 2005 and Local Government (Miscellaneous Provisions) Act 1982. His advice reflected the increased role given to residents in relation to the three licensing regimes. Mr Brown stated that a major part of his casework was to represent residents (including associations and amenity societies) and also businesses at Licensing Sub-Committee hearings. It was important that residents were kept informed of the process prior to the hearing, including any proposed conditions. He expressed the view that it was very rare for residents to leave the hearings less content with the process than when they arrived. They were able to observe the matters that the Sub-Committee took into consideration and why a decision was made. If a decision did not go the way of the resident or business Mr Brown was representing, they appreciated that it was not necessarily the end of the matter. Should the licensing objectives be undermined following the granting of an application, there was the potential for a review of the premises licence.
- 3.3 Mr Brown stated that he was available to advise clients at a location which was convenient for them. Residents and businesses were able to access the Project website containing information and advice. He had included a table in the report with the website statistics of the documents which had been downloaded during 2015. The document downloaded most frequently had been a Guide to the Licensing Act 2003. Other aspects of the Project's work included responding to local and national consultations, writing articles for residents' magazines, maintaining close links with residents' associations and amenity societies and contributing to surveys. The Project aimed to contribute to the wider Social Policy aims of Citizens Advice, improving the policies and practices which affect people's lives.
- 3.4 Mr Brown commented that in addition to ensuring that the interested parties' points were communicated to the Sub-Committee, he encouraged his clients to speak at hearings as they were often able to give powerful evidence. An example of this had been the William Hill review application in Harrow Road in November 2015. He also briefly referred to the current issues that were concerning residents, including the later permitted hours for the Night Tube on Friday and Saturday evenings being likely to result in an increase in people entering, and remaining in, the West End late at night.
- 3.5 Members of the Committee echoed the Chairman's view that Mr Brown's attendance at Sub-Committee meetings benefited those present. They asked Mr Brown a number of questions, including the following:

- Approximately how many cases had he dealt with during 2015 and how did that compare with previous years? Mr Brown replied that he received at least 100 to 110 enquiries per year. Some of the enquiries related to residents seeking his advice on applications and others residents' concerns relating to noise from premises. The split was approximately 70% to 30% in favour of advice being sought on applications.
- Were there areas in which Sub-Committee meetings could be improved? Mr Brown stated that he appreciated the way Members tended to take the time to listen to what local residents had to say at the meetings. He believed it would always lead to a better decision if Members listened to the residents' case in its totality.
- Mr Brown was asked about his priorities in terms of his workload and whether there was anyone who could cover for him in the event he was not present at a Sub-Committee meeting. He replied that his workload was varied depending on the client. For instance some local residents might be quite capable of drafting their own representations whilst others needed assistance. Mr Brown added that he aimed not to take leave on Thursdays but on the few occasions when he was not present at hearings he had provided Members with a written version of the points he would have made had he been in attendance and advised local residents accordingly. Leo Charalambides, a barrister, had offered to do some pro bono work and at the request of Mr Brown, had previously represented residents at Sub-Committee meetings.
- Did he have any thoughts about decision making at recent Sub-Committee meetings? Mr Brown expressed the view that the vast majority of decisions were fair decisions. He was able to explain the reasons for the decisions to the residents who had made representations. There did not appear to be a large number of appeals and when appeals were submitted, they often appeared to be by premises licence holders in response to review decisions because of the impact on the businesses and not because the decisions were unreasonable. He did not recall a Sub-Committee hearing where he felt that he had not been adequately heard.

3.6 The Chairman thanked Mr Brown for submitting the report and providing additional information regarding the Westminster Citizens' Advice Bureau Licensing Project at the meeting. She requested that Mr Brown update the Committee on an annual basis.

3.7 **RESOLVED:** That the Committee receive an update on the work of the Westminster Citizens' Advice Bureau Licensing Project on an annual basis.

4 POLICING AND CRIME BILL 2015-16

4.1 Mr Simpkin introduced the report. He explained the amendments to the Licensing Act 2003 that were proposed in the Policing and Crime Bill and had potential implications for the Council and other local authorities. There were two that he believed had the most significant implications. Firstly it was proposed that in addition to the courts retaining existing powers to order the

forfeiture or suspension of a personal licence if a personal licence holder is charged with a relevant offence, the Licensing Authority would also have new powers to suspend a personal licence for a period of up to six months or revoke it. This decision could only be taken by the Licensing Sub-Committee and could not be delegated to officers and the personal licence holder would have a right of appeal to the magistrates' court. Evidence had suggested that the courts were not routinely exercising their powers and the Licensing Authority would be able to take any appropriate action sooner under the proposals.

- 4.2 Mr Simpkin stated in respect of the second amendment that currently when the Police submitted an application for an expedited review, the Licensing Authority considered within 48 hours of its receipt whether to impose interim steps such as suspending the premises licence. The interim steps remained in effect until a full review hearing is conducted within 28 days of the expedited review being received. Premises licence holders were able to exercise their right to make a representation following the interim steps decision and there were currently no limits on the number of times a licensee could exercise this right. One aspect of the proposed amendment to the Act limited the licence holder to only make further representations if there had been a material change in circumstances since the previous representations had been considered by the local authority at an interim steps hearing. Another aspect of the proposed amendment to the Act would make it a requirement that the Licensing Sub-Committee would take two decisions at the full review hearing stage. The first would be to take such steps (if any) as it considers necessary for the promotion of the licensing objectives which was the decision on the full review itself. The second would be to determine what interim steps should be in place pending the outcome of any appeal, or the expiry of the time limit for making the appeal. Mr Simpkin advised that the Bill introduced a new appeal right for the Police and premises licence holder against the interim steps imposed at the full review hearing. There was the potential for an increased workload for officers as this power required an appeal to be heard within 28 days from the date it is lodged with the court.
- 4.3 Other amendments to the Licensing Act 2003 proposed in the Bill included the definition of alcohol being amended to enable the Act to take into account powdered and vaporised alcohol. Powdered alcohol was currently only authorised to be sold by the medical profession in the United States of America. It was not yet available to buy by other means in the U.S.A. Officers had identified that powdered alcohol products were being advertised in the UK in the event it becomes legal. The powdered alcohol being advertised for sale in the UK once legal was priced from £2.99 per sachet and had an alcohol volume of 10% when mixed with 170ml of water. Mr Simpkin added that there were concerns that should the powder be consumed without the water being added, this amounted to an alcohol volume of 55%. Mr Members were informed that vaporised alcohol is available in the UK and whilst officers were not aware of any premises offering their customers the opportunity to inhale alcohol pumped into a room in Westminster, it had been used in an arts style event in a London Borough of Southwark premises. Those experiencing the vaporised alcohol had been in the room for 40 minutes before moving on. Mr Simpkin also referred to the fact that there

were also proposals within the Bill to expand the list of relevant offences for personal licence holders and to enable the Secretary of State to publish revised Guidance to Licensing Authorities. Mr Simpkin stated that Members would be kept informed on the progress of the Bill.

- 4.4 **RESOLVED:** That the Committee be kept informed on the progress of the Policing and Crime Bill 2015-16.

5 GAMBLING RISK ASSESSMENTS, THE RESULTS FROM THE COUNCIL'S RESEARCH INTO AREA BASED VULNERABILITY TO GAMBLING AND THE PROPOSALS FOR THE REVISION OF THE COUNCIL'S STATEMENT OF LICENSING PRINCIPLES FOR GAMBLING

- 5.1 The Committee received a report setting out the new risk assessment requirements for gambling premises that will come into effect on the 6th April 2016, the recent results from the Council's commissioned research on area based vulnerability to gambling related harm and the proposals for the revision of the Council's Statement of Licensing Principles for Gambling to encompass these developments. The Chairman stated that she was delighted to be at the event launching the report which set out the Council's commissioned research on area based vulnerability to gambling related harm. This work had been commissioned in partnership with Manchester City Council and the Local Government Association and had been carried out by Geofutures. She added that the work had been inspired by Audrey Lewis, the former Chairman of the Committee, who had urged her in her capacity as Cabinet Member, and also officers, to ensure that there was sufficient evidence to make informed decisions in respect of applications involving gambling premises. The Chairman wished to emphasise that Westminster was not against the gambling industry. It would be of benefit that the Sub-Committee would have additional information to make good quality decisions in relation to gambling applications. The Gambling Commission had understood this need on the part of local authorities having introduced the new risk assessment requirements for gambling premises that will come into effect on the 6th April 2016. It would be useful for the gambling operators to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises.
- 5.2 Mr Simpkin made the point that Westminster is currently leading the way across the country on gambling regulation at a local level. He welcomed the fact that the Gambling Commission had introduced the local gambling risk assessment process which was in keeping with the Council's work including the commissioned research on area based vulnerability to gambling related harm. Mr Simpkin referred to the nature of the commissioned research which had been included in the report to the Committee. This had identified that there were four distinct areas where individuals or groups were particularly vulnerable to gambling related harm. These were the north west of the borough / Harrow Road, Paddington / Edgware Road, Soho / West End and Victoria / Pimlico. He informed Members that this was the first time in the UK that a vulnerability index had been produced with a location map showing the density of the risk or vulnerability. He recommended that gambling operators

take this information into account when undertaking their risk assessments as required by the Gambling Commission.

- 5.3 Mr Simpkin added that there were different reasons as to why these four areas had a higher density of risk or vulnerability. He drew Members' attention to Harrow Road which was identified as the primary hotspot. The risk profile in this area was particularly driven both by the characteristics of the resident population and by the facilities and services that exist in this area. This was in keeping with the previous work and findings of officers. A Betfred application in 2015 had been refused by the Sub-Committee based on the evidence received and this had been the first such decision which had been upheld in the country. There had also been a review of William Hill's premises licence when conditions had been attached to the licence that were having a beneficial impact on how the establishment was being operated.
- 5.4 Mr Simpkin informed Members that having received the commissioned area based vulnerability research and also the Gambling Commission's guidance on local risk assessments, officers were in the process now of creating a local area profile within a revised Council's Statement of Licensing Principles for Gambling. These would set out the key issues that the Council deems as relevant for gambling operators to consider as part of their risk assessment. He stated this was a first in the UK and it was likely that the Council would be closely scrutinised as a result. The current timetable for the draft revised Statement included undertaking a public consultation for a twelve week period from April. Taking account of the responses received, it was intended that the revised Statement was introduced in late 2016. He added that the Council had produced a guide on risk assessments for operators to consider and it had been adopted by the industry and a number of other local authorities.
- 5.5 Members of the Committee welcomed the extensive work undertaken by Mr Simpkin and the Licensing Team to date in this area. They asked a number of questions on this topic, including the following:
- Would officers be working with the Business Improvement Districts ('BIDs') and residents? Mr Simpkin replied that officers would be holding pre-consultation workshops to obtain opinion on some of the proposed changes within the revised Statement and residents and BIDs were likely to be part of this process in addition to care providers. There was an intention to develop links between the gambling industry and local groups such as care providers and charities.
 - There are particular concerns regarding customers of betting shops being addicted to using fixed odds betting terminals ('FOBTs'). Would the work being undertaken by officers be able to address these concerns in any way? Mr Simpkin responded that in terms of the commissioned research on area based vulnerability to gambling related harm, this had specifically avoided focusing on causality. There was a limited budget. He was aware that there was a study on FOBTs being carried out by the Responsible Gambling Trust which was scheduled to be published in April 2016 and was due to include gambling industry data. Mr Panto wished to clarify that the betting shops if given a licence to do so, had the right to operate FOBTs. They had been given this concession when the National

Lottery had been introduced.

- Mr Simpkin was asked about the commissioned research's findings in relation to West End and Soho. He stated that one of the key reasons for it being a hotspot was that there are three support services in this area which treat gambling addiction.
- Mr Simpkin advised Members that City Inspectors were communicating with premises in Church Street and Harrow Road regarding their responsibilities. The Police were content to challenge operators who were not effectively meeting the prevention of crime objective, including in the event there was inadequate CCTV coverage.

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

6 LICENSING APPEALS

6.1 Hayley Davies, Litigation Appeals Manager, provided the Committee with an update in respect of current and recent appeals which had been submitted in response to decisions taken by the Licensing Sub-Committee. She stated that a few weeks after the previous Licensing Committee meeting in November, the Appellant for the Press, 32-34 Panton Street appeal hearing, had advised of the withdrawal of the appeal on the grounds that the Appellant was insolvent. A costs hearing was held on 9 February 2016 where the Court ordered that the Appellant pay £39,746.20 to the City Council. The District Judge had also agreed to list the matter for a further Case Management Hearing in May 2016 to enable the Council to go back to Court if the costs are not paid. There was evidence to suggest that individual directors were aware that the Appellant was insolvent but had still decided to proceed with the appeal.

6.2 Two other matters had been listed for appeal. The full hearing for the appeal by the Licensee at The London Edition, 10 Berners Street was scheduled to begin on 6 June 2016. A street trader had appealed against the decision by the Licensing Officer Panel to revoke his licences for Pitch 545 and 546 Church Street Market and this was scheduled for 24 March 2016. Ms Davies stated that in respect of the Sex Establishment Licensing fees case, copies of all submissions made to the European Court of Justice from Hemming, the European Commission and the Netherlands had now been received and on the basis of Counsel's advice, an application for an oral hearing had been submitted by the Council.

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

7 ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

7.1 There were no urgent items of business for the Committee to consider.

8 FUTURE LICENSING COMMITTEE MEETING DATES

8.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 6 July 2016 and Wednesday 30 November 2016. All meetings are scheduled for 10.00am. The Chairman asked Members to contact her in the event they wished to put forward agenda items for future meetings of the Committee.

The Meeting ended at 12.23 pm

CHAIRMAN: _____

DATE _____