



City of Westminster

Licensing Committee

Item No:	6
Date:	11 March 2015
Classification:	For General Release
Title of Report:	Licensing Appeals
Report of:	Head of Legal and Democratic Services
Wards involved:	Not applicable
Policy context:	A business like approach
Financial summary:	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3.1 To date, 460 appeals have been heard / settled / withdrawn:

- 16 allowed
- 11 allowed only in part
- 56 dismissed
- 212 withdrawn
- 165 settled

4. Licensing Act 2003 Appeals

4.1 Avalon at 39-45 Shaftesbury Avenue, London, W1D 6LA

By application received dated 27 December 2013, the Metropolitan Police applied to review the premises licence for the nightclub 'Avalon' located at 39-45 Shaftesbury Avenue, London W1D 6LA under section 53A(1)(b) of the Licensing Act 2003 (premises associated with serious crime and disorder). The application was made by the Metropolitan Police following a fatal shooting within the premises on 26 December 2013 at approximately 03.00. At the time of the incident, the premises were operating under a Temporary Event Notice (TEN).

Since the transfer of the licence approximately one year previously to the current licensee, Zafaran Limited, and the operation of the premises as 'Avalon', there had been 5 recorded allegations of GBH assaults, 3 ABH assaults and 5 incidents of common / public order offences. Of those assaults, 7 had occurred since 24 November 2013.

The Licensing Authority held a hearing on 30 December 2013 to consider whether it was necessary to take any interim steps pending the determination of the full review applied for. Upon hearing evidence and submissions from the Metropolitan Police and from the Licensee, the Licensing Sub-Committee felt it was necessary to suspend the licence.

The full hearing of the review was held on 21 January 2014. The Sub-Committee heard submissions from the licensee and from the Metropolitan Police. The Sub-Committee also heard from representatives of the landlord, Delfont Mackintosh Theatres Limited, who explained a notice to terminate the lease had been issued and that the landlord had applied for a transfer of the licence but there were outstanding issues with the Council as to whether consent had been given and whether the application could proceed without consent.

The Sub-Committee was horrified that such an event had taken place and could not remember a time when there had been a fatality of this kind in a licensed premises in Westminster. The possibility that people associated Westminster clubs with fatality was not something which the Sub-Committee expected to have to deal with and needed to be taken extremely seriously. The Sub-Committee made it clear that it could not allow itself to be involved in any decision that suggested that this kind of situation could arise again. The Sub-Committee therefore considered that it was appropriate to revoke the licence due to the extreme seriousness of events.

The Sub-Committee also believed that where a licence holder had behaved so reprehensibly it seemed entirely inappropriate that they should be in a position to decide how the premises would continue to operate, which in effect was what was being proposed. The diligence by the Police in examining proposals and clarifying the relationship between parties had been helpful.

Notice of appeal was lodged on behalf of the Landlords, Delfont Mackintosh Theatres Limited. The Appellant made a compromise proposal, under which the licence would be amended to permit a restaurant with bar, and that offer was considered and rejected by the Licensing Sub-Committee. The full hearing of the appeal took place on 18th, 19th and 22nd September 2014 at Westminster Magistrates' Court. At the hearing the Appellant's case was that the licence should not be revoked, but should be amended to permit a restaurant with no bar, and with a 1am terminal hour. The City Council's position was that the appropriate course was for the Court to dismiss the appeal and for the Appellant to submit a new application for a licence for the proposed establishment. The appeal concluded on the 22nd September and judgment was reserved. Judgment has since been received dismissing the appeal. Costs of £30,000 were awarded to the City Council.

4.2 Amika, 43 South Molton Street, London W1

By application dated 24 April 2014, the Metropolitan Police applied to review the premises licence for Amika, 43 South Molton Street, London W1 under section 53A(1)(b) of the Licensing Act 2003 (premises associated with serious crime and disorder). The application was made by the Metropolitan Police following an incident at the premises on Monday 21st April 2014 at approximately 02:10. The disorder appears to have been between two groups of males at different tables in the basement area of the venue. The fight included bottles being thrown and being used to hit people. This resulted in a customer being the victim of a glass enabled GBH, where he was hit in the face by a piece of glass from a smashed bottle. CCTV shows that the disorder continued inside the venue for 13 minutes including serious disturbances at the entrance where persons are seen throwing glasses and bottles from inside (CCTV footage shows persons in the foyer picking up glasses and bottles from the reception desk and throwing them out of the premises through the door). Simultaneously, males outside the premises are seen fighting with metal poles and ropes.

After the sustained attack, the doors of the premises are breached and both groups who ran towards Oxford Street. It was at this point that Police were called by the premises. The fighting continued in Davies Street and Oxford Street where males attacked several vehicles with metal poles as they drove by.

The management and security had no control of the premises and were unable to prevent the escalating serious disorder and violence.

No suspects were detailed, victims were not identified and First Aid was not given. The scene of the disorder both inside and outside was cleared immediately and the Police were not called until after all parties involved had left the premises.

The Metropolitan Police were of the view that the level of the disorder and violence during this incident was so serious that it represented significant failings in upholding and promoting the Licensing Objectives.

An expedited hearing of the Licensing Sub-Committee was held on 29 April 2014 to consider whether it was necessary to take any interim steps pending the determination of the full review applied for. Upon hearing evidence and submissions from the Metropolitan Police and from the Licensee, the Licensing Sub-Committee felt it was necessary to suspend the licence.

The full hearing of the review was held on 19 May 2014. The Sub-Committee heard submissions from the licensee and from the Metropolitan Police. The Sub-Committee heard that the Licensee's premises had previously been located in Kensington High Street where a review of the premises licence had taken place and the hours on the licence had been cut back and that the decision was upheld on appeal. The Licensee had then re-located to South Molton Street and had opened there in April 2012. The current full review was the second at South Molton Street and the third the Licensee had been involved in. Conditions had been attached to the licence by the Sub-Committee at the review in August 2013 and then further conditions had been attached in April 2014 as a result of a minor variation following incidents including a glassing and a stabbing in February 2014. Mr Rankin, on behalf of the Metropolitan Police, commented that the minor variation had resulted from an informal review by the Police where the Police would have considered taking matters further had the Licensee not consented to agreeing the conditions.

Based on all the evidence heard the Sub-Committee unanimously agreed, in keeping with the view of the Sub-Committee at the interim stage, that they had no confidence in the Licensee and/or the management of the premises. The Sub-Committee considered it was appropriate to revoke the premises licence.

Notice of appeal was lodged on behalf of the Licensee and the full hearing of the appeal was listed for 9, 10, 14 and 16 October 2014 at Westminster Magistrates' Court.

It is the Council's position that the interim steps imposed by the Licensing Sub-Committee on 29 April 2014 continue to apply until the appeal has been disposed of. However, it is understood that the Appellant's legal advice is that the interim steps ceased to have effect after the Licensing Sub-Committee hearing on 19 May 2014. The premises were found operating and selling alcohol on 27th May which resulted in the service of a section 19 notice by Metropolitan Police. The Metropolitan Police then sought a section 20 Closure Order at the Magistrates' Court. The City Council were joined as an Interested Party to the Closure Order Proceedings. The full hearing of the Closure Order was held on 11 July 2014 at Westminster Magistrates' Court. Judgment was reserved and subsequently handed down confirming the grant of the Closure Order.

The Appellant's representative subsequently advised of their instruction to withdraw their appeal against the decision of the Licensing Sub-Committee. A costs hearing was held on 21 November 2014 in respect of both the Closure Order proceedings and the appeal proceedings. Full costs were awarded to the City Council in the sum of £20,920.36.

4.3 ME Hotel, 335 Strand, London, WC2

An application for review of the premises licence of the ME Hotel located at 335 Strand, WC2 was made on 14 August 2014 by a local resident, Mrs Swann. The Review was made on the grounds of the Prevention of Crime and Disorder, the Prevention of Public Nuisance and the Protection of Children from Harm in relation to the playing of loud music and noise nuisance on the 10th Floor Roof Terrace.

Representations in support of the application for Review were received from the Environmental Health Service, a local resident and a local business.

The Licensing Sub-Committee considered the application on 16 October 2014. The Sub-Committee were advised that the noise from the 10th floor roof terrace seemed to travel and bounce off the high wall behind Ms Swann's flat causing noise nuisance to Ms Swann and her family. The Sub-Committee heard that the ME hotel had been running events during the summer afternoons which had been very loud and oppressive. In addition loud music was being played during the evening that was causing her a great deal of stress as she was unable to sleep. This had had a detrimental effect on her family life.

Representatives for the Licensee, advised that action had already been taken to reduce the noise nuisance by removing the external loud speakers, displaying signs to remind guests that they were within a residential area and employing additional staff to ensure guests kept their personal noise to a reasonable level. He added that the Hotel were happy to agree to all the proposed conditions. He further added that the applicant was also willing to vacate The Strand side of the terrace leaving only the Covent Garden side of the terrace in operation after 10.30pm.

The Sub-Committee had a lengthy discussion with all representatives regarding the position of the barrier on the 10th floor, the effect the glass panel had on noise nuisance, access to and from the Penthouse suite, the arrangement of the seating on the terrace and the travel of noise to the residential areas from the 10th floor.

The Sub-Committee considered all the representations very carefully and stated that they were disappointed that the nuisance had occurred and the loud speakers had been placed on the terrace. They were also surprised that the loud speakers had not been removed earlier during the complaint process.

The Sub-Committee decided to impose conditions on the premises licence which would hopefully ensure that the problems did not recur and which would help clarify the use and operation of the premises and promote the Licensing Objectives.

Notice of appeal was lodged by the Licensee against the decision of the Sub-Committee. The full hearing of the appeal in the Magistrates' Court is listed for 1-4 June 2015.

4.4 Friends Supermarket, 82 Lupus Street, SW1

By application received on 18 July 2014, the Licensing Authority applied to review the premises licence of Friends Supermarket, 82 Lupus Street, London, SW1V 3EL. The review was brought on the grounds of the prevention of crime and disorder and the protection of children from harm.

The premises have a history of breaches relating to the sale of alcohol to persons under 18 years of age (contrary to s.146 Licensing Act 2003) and sale of tobacco to a minor (contrary to Children and Young Persons Act 1993).

On 22nd May 2014, during an operation involving Customers and Excise and Trading Standards substantial quantities of alcohol were seized from the premises when it became apparent that no 'excise duty' had been paid on the goods. These are offences under s.170 of the Customs and Excise Management Act 1979 and s.144 of the Licensing Act 2003.

Representations in support of the application for Review were received from the Environmental Health Service, the Metropolitan Police and a local resident.

The Licensing Sub-Committee considered the application on 11 September 2014. The Sub-Committee heard from Licensing Inspector who outlined the background to the review. The amount of the alcohol which had been seized was significant to the value of £150k and would attract Excise duty of about £31k. Both the Licensee and the Designated Premises Supervisor admitted the offence which could have attracted a Level 3 fine of £1,000. The Custom and Excise Officers who had secured the goods had written to the Licensee warning that further problems would lead to prosecution but in the meantime they would allow the licensing authorities to undertake a review if they so determined. He also drew the Sub-Committee's attention to the guidance issued under Section 182 of the Licensing Act 2003 which advised in these circumstances that the Sub-Committee should give serious consideration to revoking the licence, in

extreme cases such as this. PC Jim Sollars spoke on behalf of the Police in support of the review which in view of the serious nature of the recent incident should lead to revocation of the licence particularly in view of the vast amount of alcohol involved.

Louise Joyce, Environmental Health Service, spoke in support of the review and for revocation as the matters were not capable of resolution by the imposition of additional conditions.

The Solicitor for the Licensees addressed the Sub-Committee explaining that her clients had been under pressure as a result of a new Tesco's Express and other economic pressures. They had admitted the offence and had given a full account to the authorities to assist in identifying the supplier. They had attended all meetings which had been requested by the authorities. The Licensees wished to keep the business in the community but they appreciated that their actions had led to serious problems. Accordingly, it was proposed that the licence be transferred to other members of the family. It was emphasised that at each stage the Licensees had cooperated with the authorities. The letters of support for the premises from local residents, which had been circulated, were drawn to the particular attention of the Sub-Committee.

The Sub-Committee did not consider it appropriate or possible to add additional conditions to the licence to resolve the issue. In the circumstances of the serious nature of this case the Sub-Committee considered that the only appropriate and proportionate option was to revoke the licence.

Notice of appeal was lodged by the Licensee. The full hearing of the appeal has been scheduled for 16 April 2015.

4.5 8-10 Hill Street, London W1 (x 2 Appeals)

By application received on 21 October 2014, London Executive Offices Ltd applied for a new premises licence for the lower ground floor to fourth floor, 8-10 Hill Street, London, W1. The application sought the sale by retail of alcohol on Monday to Sunday from 10.00 to 23.00.

Adverse representations were received from

- the Residents Society of Mayfair & St James
- The Mayfair Residents Group
- Freeholder, 12-18 Street Management Ltd
- 6 local residents

The Licensing Sub-Committee considered the application on 11 December 2014. The Sub-Committee were advised that the premises would not act as a private members club and were only rarely likely to use the licence up to 23.00. The use would be mainly for corporate executive events. The numbers attending would generally be in the region of 20/30. Local residents addressed the Sub-Committee as to their fears with regards increased noise. The Sub-Committee granted the application for the lower ground, 1st, 2nd and 3rd floors only subject to conditions for Monday to Fridays from 10.00 to 23.00, Saturdays from 10.00 to 20.00 and on Sundays from 12 noon to 19.00. In order to offer additional protection to the local residents they agreed to limit the supply of alcohol in the external garden on relevant days to 21.00.

Two notices of appeal have been received against the Sub-Committee's decision to grant the licence. The first appeal was lodged by local residents, Mr Adrian White and the Honourable Mrs Jessica White. The second appeal was lodged by 12-18 Hill Street Management Company/12-18 Hill Street Freehold. A date for the full hearing has been set for 12th, 13th and 14th October 2015.

5. CITY OF WESTMINSTER ACT 1999

- 5.1 Mr Gawdat George has been licensed for the sale of handbags and leather goods on Saturdays from Pitch 611 since July 2011 and from Pitches 612 and 613 in Church Street market since 2001.

Throughout 2012 and 2013 Mr George repeatedly failed to pay his street trading fees when due and only made block payments upon the threat of revocation of his street trading licences. Following numerous warning letters and referrals to the Licensing Officer Panel for arrears on his account, Mr George was invited to attend a Licensing Officer Panel on 9 December 2014 where the revocation of his licence would be considered.

Mr George attended the Panel hearing and explained that, in order to support his family, he had three jobs. He explained that, as well as being chased to pay his street trading charges, he was also being chased to make tax payments and bank payments. He advised the Panel that the arrears on his account were because the direct debits had failed due to other outgoing payments. Mr George said that he had now paid the total outstanding arrears on his account.

The Panel concluded that given Mr George had previously been called to a hearing in March 2013 for a similar situation they felt that they had little option but to revoke the licences. The Panel explained to Mr George that he had been given the opportunity to keep up with his payments but unfortunately he was not able to do so. The Panel therefore decided to revoke the street trading licences for Pitches 611, 612 and 613 Church Street Market.

Notice of appeal was lodged against the revocation. A date for the full hearing of the appeal is scheduled for 30 March 2015.

6. JUDICIAL REVIEWS / CASE STATED

- 6.1 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 was lodged to the Supreme Court itself for permission to appeal. Submissions in support of the Council's application for permission to appeal were filed by the Architects Registration Board, the Bar Standards Board, the Solicitors Regulation Authority, the Law Society, the Farriers Registration Council, the Care Quality Commission and the General Council of the Bar. An Order was received from the Supreme Court granting permission to Appeal. Applications to intervene were submitted on behalf of the Bar Council, the Law Society, the Architects Registration Board, the Solicitors Regulation Authority, the Bar Standards Board, the Care Quality Commission and the Farriers Registration Council. A conference with Counsel was held to discuss procedural issues and how best to deal with intervenors. The LGA had been invited, and attended, the conference part way through to discuss the possible role of the LGA. It was agreed that WCC would instruct a Licensing Counsel to assist those already instructed to deal with any licensing issues and research regimes that may be impacted.

The LGA subsequently advised us that they have been advised by Counsel to apply to intervene by making written submissions.

A date for the hearing in the Supreme Court was set for 13 January 2015.

The case was heard in Supreme Court on 13 January 2015 before Lord Justices Neuberger, Clarke, Toulson, Reed and Mance. The parties are the City Council as appellant, Mr Hemming and the other sex shop proprietors as respondent, and the intervenors. Seven regulatory bodies and the Local Government Association were given permission to intervene and were represented. There was also a ninth intervener at the hearing, the Treasury.

For the purposes of the hearing, all the parties in the case were required to file written submissions setting out their case. The first significant development is that in the course of that process, the nature of the argument has shifted very significantly. Essentially the argument revolves around a provision in the Services Directive which says that, in a licensing regime which is within scope, any charges which applicants may incur from their application may not exceed the cost of the authorisation procedures and formalities. In the Court of Appeal, we argued that the term "authorisation procedures and formalities" was wide enough to include enforcement action against unlicensed operators. As an alternative argument, we said that a fee charged only to successful applicants did not come within the scope of this provision at all, because the provision is designed to limit only charges paid by applicants for the application process, and does not constrain other charges made to licence-holders. Both arguments were rejected by the Court of Appeal.

However most of the intervenors are supporting what was our alternative argument, and it appears that the respondents are now conceding a large part of it. The respondent is no longer arguing that the Directive prevents full cost recovery as a matter of principle, where domestic legislation allows charges to licence-holders otherwise than for an application (for example, annual fees under the 2003 Act). The respondents are now relying on a much narrower point, that under the sex establishment regime as it stands, fees can only be charged on an application, and so are caught. The significance of that, obviously, is that if the Supreme Court accept that approach (and they will not necessarily consider themselves bound by concessions made by the respondents when determining the meaning of the Directive), although we

would lose the case, it would no longer have the wider adverse implications which were feared.

The hearing itself took place over one day, and appeared to go well.

After the hearing, the Court wrote to all parties inviting further submissions on matters which, they considered, may not have been dealt with fully at the hearing because of shortness of time. These issues appear, largely, to revolve around whether it is open to a licensing authority to charge, at application stage, a fee which is returnable if the application is unsuccessful, or whether such a fee may only be charged later, when the application is granted or at a later stage than that. The City Council and the interveners have filed written submissions on those issues, on 26th January. The respondents filed lengthy submissions in response. The City Council was given permission to file a short Reply, which was done last Friday. The Respondents are likely to file further submissions in response to that, after which no more written submissions will be permitted.

Judgment is expected in two or three months.

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.

<p>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</p>

Background Papers

- None.