

Licensing Advice Project

**Activity Report: 1 January 2015 - 31
December 2015**



**citizens
advice**

Westminster

Executive Summary

The Licensing Advice Project is provided by Citizens Advice Westminster (formerly Citizens Advice Bureau) and funded by Westminster City Council. The Project was set up in 2005.

The Project provides 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.

The need for advice on these issues reflects the increased role given to residents in each of the three licensing regimes.

Clients are advised by email, by phone, and in person. Clients are seen in person at their convenience, usually at their home or a venue local to them. Advocacy on behalf of residents at licence hearings is a major part of the Project.

In addition to casework, the Project undertakes a range of other activities, including responding to local and national consultations. The Project also has a dedicated website containing information and advice.

The Project has a range of benefits for clients, the local authority, and the licensing process in general, including helping to ensure that objectors focus on relevant issues in representations and at hearings.

The Project contributes to the wider Social Policy aims of Citizens Advice, improving the policies and practices which affect people's lives.

The Project looks forward to continuing to provide tailored, focused, timely, specialist, practical and pragmatic advice, information, assistance and representation to residents and businesses in 2016.

Contents

1. Introduction and overview
2. The Licensing Advice Project's Service
 - 2.1 Casework
 - 2.2 Other Project activity
3. Benefits of the Project
4. Social Policy work
5. 2016
6. Conclusions

Appendices

- A. Case studies
- B. Website statistics
- C. Client comments and thanks

1. Introduction and overview

The Licensing Advice Project (“the Project”) is provided by Citizens Advice Westminster and funded by Westminster City Council. This Report sets out the activity of the Project during 2015.

The Project provides free information, assistance, advice and representation to residents of the City of Westminster (including residents’ associations and amenity societies) and businesses in respect of their rights and responsibilities as “interested parties” under three licensing regimes:

- Licensing Act 2003¹
- Gambling Act 2005 (since 2012)
- Local Government (Miscellaneous Provisions) Act 1982² (since 2012)

The service is independent, impartial and confidential. It is the only service of its kind in the country.

The advice takes in a range of issues including problems with the current operation of a premises or objections to applications made under the three regimes.

The twin aims of the Citizens Advice service nationwide are:

- To provide the advice people need for the problems they face.
- To improve the policies and practices that affect people’s lives.

To this end, the Project focuses not only on casework, but also on wider issues in licensing law on behalf of residents, for example helping to ensure that developments in the law or Council procedure are disseminated, responding to consultations at both local and national level, and contributing articles for local and

¹ “Interested parties” are now known as “other persons”

² Under the 1982 Act, resident objectors are simply referred to as “objectors”

national publications.

The Project reports quarterly to a Steering Group chaired by Matthew Bennett, a resident of Westminster with expert experience of licensing issues from a resident's perspective and from a licence holder's perspective, and comprising the adviser, a representative from the City Council (Chris Wroe), and the adviser's line manager.

2. The Licensing Advice Project's Service

The Project has been advising residents of Westminster for just over 10 years. It is currently staffed by:

- The adviser - Richard Brown. Richard is a qualified solicitor who has specialised in licensing law for 9 years, particularly in Westminster.
- Project administration and line management

Although the three regimes covered by the Project are superficially similar in terms of residents' rights and responsibilities, there are a number of important differences. It is important for residents to understand the nuances of each regime. In particular, each regime has specific parameters for what is 'relevant'.

The philosophy of enabling increased involvement by local people is common to all three licensing regimes. One reason why Licensing Act 2003 empowered local authorities with licensing functions previously exercised by licensing justices was to increase the accessibility of the process to residents, who 'may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors.'

The amendments to Schedule 3 of Local Government (Miscellaneous Provisions) Act 1982 to include 'sexual entertainment venues' were a direct result of lobbying by certain groups with the express purpose of giving local communities more of a say in such applications.

2.1 Casework

The Project has provided information, assistance, advice and representation on the following types of application in 2015:

- new premises licence under s17 Licensing Act 2003
- variation of premises licence under s34 Licensing Act 2003
- review of premises licence under s51 Licensing Act 2003
- new club premises certificate under s71 Licensing Act 2003
- ‘minor variation’ of premises licence under s41A Licensing Act 2003
- new premises licence under s159 Gambling Act 2005
- review of premises licence under s197 Gambling Act 2005
- review of premises licence under s200 Gambling Act 2005
- noise/anti-social behaviour and other public nuisance issues
- information/advice on miscellaneous licensing issues – e.g. WCC’s consultation on Licensing Policy

Level of work

No two cases are the same, and so it is difficult to generalise about casework. For advice on applications for licences, some clients simply request information on an application or issue and do not require further assistance. More usually, clients require more detailed advice on an application and how best to frame their objections. We would then offer to draft or assist with drafting their representations. Where clients request representation at hearings, we usually offer a face to face meeting to go through the procedure and explain what to expect. We suggest pragmatic approaches to applications, and to proposals by applicants’ representatives. Following hearings, we report the outcome and any conditions which were imposed.

For noise problems and reviews, we advise on what options are available. Where appropriate, we will write to the licence holder/DPS and liaise with them on behalf of residents. We advise on what evidence residents need in order to bring an effective

review application. We draft review application forms and witness statements, and assist with the procedural aspects, for instance ensuring that the application is correctly served. Casework therefore tends to comprise three broad stages:

- **Information only,**
- **Advice and assistance,**
- **Representation at Sub-Committee hearings.**

In 2015, the Project represented residents (ranging from an individual to multiple residents, amenity societies and residents' associations, at 37 licensing hearings.

The Project was also asked to represent residents at a number of hearings which were either not necessary following withdrawal of representations after negotiations and agreement, or where we were not able to attend but instead submitted written representations in advance of the hearing.

Key features of casework

- Advice and representation can be provided to an individual client, to groups of 2 or more clients, to residents' associations, amenity societies, and to 'ad hoc' groups of residents.
- Clients are rarely seen in the Bureau. We see clients in their homes or at a convenient place e.g. coffee shop or workplace, at a time which is, as far as possible, convenient for the client.
- Clients can access the service outside working hours by email.
- Clients can access the Project website at their convenience.
- If a client is unable to attend a hearing, they can still be involved in the process by being represented at the hearing.

There are two case studies at Appendix A.

2.2 Other Project activities

- We submit an article for each edition of the Institute of Licensing’s ‘Journal of Licensing’ with a focus on licensing issues affecting residents.
- We have developed and maintained a dedicated website, www.licensingadvice.org. The website has general information and advice on all three licensing regimes, and handy step-by-step guides to each are available to download.
- We maintain close links with amenity societies and residents’ associations.
- We attend the Westminster Entertainment Forum.
- We used to attend some of the Area Forums. The Area Forums have been replaced by ‘Open Forums’, which we are also planning to attend.
- We submit articles for residents’ magazines/newsletters.
- We respond to Westminster City Council or Government consultations
- We encourage and facilitate involvement by residents in consultations
- We have contributed to external licensing research projects, giving a residents’ perspective – e.g. the joint Westminster City Council/Manchester City Council-funded gambling research by ‘Geofutures’, and a research project on the first ten years of Licensing Act 2003 by the ‘Institute of Alcohol Studies’.

4. Benefits of the Project

Benefits for clients

- Access to specialist legal representation in a niche area of law
- The Project is a “one-stop” resource of information as well as advice and representation
- Representation in terms of direct feedback and policy reporting to the local authority on issues affecting or likely residents
- Representation in terms of responses to local and national consultations affecting or likely to affect residents
- We can advise and represent more than one resident
- Residents are empowered to participate in the licensing regimes
- Residents who do not have the time, do not wish, or do not need to contact

the Project directly can access the website at their convenience

- The Project can 'level the playing field' at hearings by providing representation to objectors
- The Project can speak for residents who may feel intimidated or nervous at speaking, especially where the applicant is represented by an experienced solicitor, barrister or QC
- The Project can explain what different conditions mean in practice
- The advice provided is tailored to licensing in Westminster
- The Project provides residents with representation when residents are unable to attend hearings attend because of e.g. work/holiday
- Disabled clients who are unable to attend a hearing can have appropriate representation

Benefits for the local authority

- The Project can coordinate representations and concerns, especially regarding last minute changes to an application or additional conditions being proposed. This can lead to more efficient hearings.
- Saving of officer time
- The service is independent of Westminster City Council as it is provided by Citizens Advice Westminster
- It is the only service of its kind in the country where resident objectors have access to free specialist representation
- Due to the length of time the Project has been in existence, the advice provided is able to be tailored to licensing issues in different parts of Westminster
- Clients often express gratitude to the City Council for providing the service.
- The service can help facilitate agencies working to a common goal e.g. when residents support responsible authority-led reviews
- Residents can take their own action without responsible authorities having to do so
- Residents' views can be heard when on holiday, rather than requests for adjournments being made

- Allows residents to play full role at a hearing e.g. be party to discussions beforehand/during, and receive pragmatic advice on developments
- Reputational benefit in providing a service which no other local authority provides
- Councillors are able to refer residents to the Project
- Council officers are able to refer residents to the Project

Benefits for the process as a whole

- Applicants can have one point of contact for multiple resident objectors
- Objectors sometimes withdraw or do not make representations having taken advice, thus saving time and expense for all
- Concerns are focused on relevant matters
- Conditions can be agreed or proposed prior to a hearing
- Late changes to applications can be explained to residents independently
- 'Live' issues can be narrowed down or at least clarified prior to a hearing

6. Social Policy

The Social Policy work of Citizens Advice involves collecting client evidence, locally and nationally, to campaign for change to policy and practice.

Social policy work in the context of the Licensing Advice Project can include: cases where the impact of the advice given is wider than the individual to whom the advice is given, or cases which sets a precedent which has a wider impact than the individual case itself. For example, we have assisted residents' associations/amenity societies, or individual residents who are themselves acting on behalf of other residents, or a resident shares the advice with other residents.

We also contribute to Social Policy work through dissemination of useful information about Council procedure/best practice, either through the website or by emailing amenity societies. For example, we have sent out topical procedural information to amenity societies - e.g. changes in contact details for the Licensing Teams.

We also contribute to Social Policy work is by responding to local and national consultations. For example, we responded to the City Council's consultation on its review of its Statement of Licensing Policy, and assisted amenity societies. A copy of the Project's response is available on request.

7. 2016

Licensing law seems to be in a state of constant flux, particularly issues relating to Licensing Act 2003 and Gambling Act 2005. It is likely that 2016 will see the introduction of the 'Night Tube', which may have ramifications for licensing in central London and beyond. In particular, it may lead to an increase in applications beyond the 'core hours' policy HRS1. The impact of the Night Tube is unclear, but it will be important that residents are able to engage with the debate either in individual applications, or wider Policy considerations.

8. Conclusions

The twin aims of Citizens Advice dovetail nicely with the remit of the Project. Providing residents of Westminster with access to specialist advice and representation is an important step in ensuring that residents are empowered to utilise their rights and responsibilities and participate in the democratic process which Parliament has, in each of the licensing regimes, entrusted to local authorities.

The effective participation of residents in these licensing regimes helps to ensure that the views of all stakeholders are taken into account when the licensing authority exercises its functions under Licensing Act 2003, Gambling Act 2005 and Local Government (Miscellaneous Provisions) Act 1982.

We look forward to continuing to meet the needs of the community by providing tailored, focused, timely, specialist, practical and pragmatic advice, information, assistance and representation in 2016.

APPENDIX A: Case study

Representations on licence applications

Licensing Act 2003

Premises: Restaurant

Location: Soho

Client type: individuals (x6)

Application type: application to vary premises licence

The background

We were contacted by a resident who wished to object to an application to vary a premises licence for a restaurant adjacent to his flat. The resident initially sought advice on the content of his representation, and subsequently sought advice going forward and requested representation at the hearing.

We had a meeting with the client and other residents prior to the hearing. We were subsequently contacted by 3 other individuals who had objected to the application and requested the Project to represent them at the hearing. The application was refused.

The application

The premises licence required the premises to operate as a restaurant, as the licence was subject to conditions requiring the sale of alcohol to be ancillary to substantial table meals. The application sought to relax this condition to permit a number of customers to drink without being required to eat. The client and other residents were concerned that this would lead to the premises becoming a bar, which would add to 'cumulative impact' in the West End Stress Area and an increase in public nuisance.

We advised the client how his representation should be amended to make it more effective. We drafted a section on the relevant Council policies which were applicable. The client was given background information on the context of the application. We informed the client that there had been a number of similar applications in Soho recently, as operators sought to relax the 'restaurant' licence conditions to which they were subject. They had been encouraged in this endeavour by a successful appeal by an operator against a decision of the Council's Licensing Sub-Committee. The application submitted here was in almost identical terms to the outcome of the appeal.

We therefore advised that objectors concentrate on distinguishing the circumstances of this application from the circumstances of the appeal decision, as each case must be decided on its own merits. We obtained from the Council a copy of the most recent appeal decision, and sent it to the clients with advice on what the salient points were from that appeal, and how this application might be different. In

this way, at the hearing, residents could argue that the appeal decision should not be taken as tacit approval for subsequent applications.

The client requested a meeting with us before the hearing, to discuss the content of the Report to Sub-Committee which would be considered by the Council at the hearing, and to discuss what their approach should be. We explained the hearing process and advised on the content of the Report and that in opposing the application we intended to demonstrate that the circumstances of this case were different to previous cases which had been granted on appeal.

We confirmed arrangements for the hearing to residents and informed them of the requirement to inform the case officer at the Council whether or not they intended to attend the hearing.

The hearing

Four residents requested to be represented at the hearing. Three residents attended in person. The applicant was represented by a partner of a well-known law firm specialising in licensing. We were able to rebut the points made by the Applicant's representative and argue that the proposed change amounted to a change in the nature of the operation, in contrast to previous similar applications which had been granted on appeal.

The Sub-Committee decided to refuse the application. We reported the outcome of the hearing to the clients and advised that the Council would send them confirmation of the decision with reasons in due course.

Conclusion

The advice, information and assistance given enabled residents' objections and the case they were able to put at the hearing to be framed effectively and couched in terms which took into account the correct context of the application and how the Sub-Committee may seek to determine it, taking into account previous appeal decisions which the residents would not otherwise have known about.

Gambling Act 2005

Premises: betting shop

Location: Harrow Road

Client type: individuals (x8), amenity society

Application type: application for review of premises licence (initiated by licensing authority)

The background

Local residents had for some years experienced frequent nuisance, anti-social behaviour and crime and disorder related to the operation of a betting shop on the part of Harrow Road known as 'Prince of Wales junction'.

Westminster City Council had been made aware of the gravity and scale of these concerns during a campaign waged by residents and a Neighbourhood Forum to

object to an application for a new betting shop in the near vicinity of the existing betting shop. Residents were able to organise themselves to submit a large amount of effective representations to that application, many of which referred to the ongoing problems with the existing betting shop.

The Project had advised a number of residents and community groups on how to make effective representations on the application for a new betting shop, and had helped to co-ordinate the community campaign. We represented a number of the residents and groups at the hearing. The application for the new betting shop was refused.

After the hearing we had a meeting with Council officers and residents, at which residents were asked about their views on whether they would support a Council-led 'review' of the existing betting shop's licence.

The application

Betting shop premises licences are not time limited and do not need to be renewed. The licence for the existing betting shop had existed for many years and when Gambling Act 2005 came in to force, the previous licence issued the Magistrates' Court was simply converted in to a 'premises licence' under the new Act. Gambling Act 2005 provides the power for a licensing authority (i.e. the Council) to initiate a 'review' of a licence if problems have occurred. Because of the powerful evidence submitted by residents both before and after the hearing of the application for a new betting shop, the licensing authority (the Council) decided that they would initiate a review of the licence.

This is a procedure which can ultimately lead to the revocation of the licence, although more likely it will lead to restrictions and conditions being added to the licence aimed at resolving the anti-social behaviour and other problems experienced by residents.

Residents who witnessed the problems on a daily basis reported that customers using the betting shop often drank alcohol outside the premises, took alcohol inside the premises and consumed it there, perpetrated anti-social behaviour, harassed and threatened passers-by, consumed drugs, and sold stolen goods. Numerous complaints had been made to the staff but it appeared that they were unable or unwilling to take effective action. The drinking inside and outside the premises was part of a wider problem of street drinking, which seemed to focus on the area immediately outside the betting shop. The location is very sensitive, seeing a large amount of footfall and having a history of serious problems with crime, disorder and anti-social behaviour.

All in all, the issues were having a profound effect on those living directly above the premises, and were having a wider effect on the community who passed the premises everyday whilst going about their daily business. The City Council was working with residents to improve the area, and it was felt that these issues were detrimental to that aim. We agreed to play a role advising residents and residents' groups, and representing them at the hearing.

Once the review had been initiated, a 28 day consultation period started during

which time ‘interested parties’ (local residents and businesses situated ‘sufficiently close’ to be affected) could make representations.

As with the previous application for a new betting shop, residents struggled somewhat with the terminology and requirements of the legislation. We advised residents by email as to what they needed to do to support the review. We discussed with them what outcome they sought from the review. Some wanted the licence revoked, some wanted strict conditions imposed.

We repeated the advice previously given as to the content of representations. Most were happy to write and submit their own representations, which was a sign of how they had been empowered by the advice given on the previous application for a new betting shop licence. We drafted a representation on behalf of the amenity society which represented residents in the area. The representation covered broader and wider issues on behalf of the community as a whole.

We were then contacted by a representative of a residents’ group who asked for advice on what to include in a representation. We gave advice to them to pass on to their members.

The hearing

The application was listed for a hearing before the City Council’s Licensing Sub-Committee in October. We advised residents on the hearing procedure. We were asked to represent 4 individuals who were not able to attend the hearing and who would otherwise not be able to play a part in proceedings. We were also asked to represent 4 residents who were attending, and the amenity society. One resident was happy to represent herself but sought advice on the content of the hearing paper and what she needed to focus upon at the hearing.

We telephoned each resident who was attending the hearing to discuss and advise upon the content of the Report to Sub-Committee, which was over 1000 pages long and contained copious evidence from the licensing authority’s observations of the premises and evidence from the licence holder’s solicitors and QC. We explained the hearing procedure for a licence review hearing and confirmed the attendance details.

We met residents on the morning of the hearing to discuss anything which had arisen from their reading of the evidence. We represented 8 individual residents, including a resident who turned up on the day without having contacted the Project. She did not know anything about the process and whether she could speak. A Council officer asked if we would speak to her. We spoke to the resident and explained the situation, and agreed to represent her also. We explained that she could address the Committee herself, which she subsequently did, briefly. A Councillor also attended the hearing. The licence holder was represented by a firm of well-known licensing solicitors, and an eminent QC.

We spoke to the licensing authority and to the licence holder’s legal representatives in order to get an update on the current situation. It transpired that a list of conditions had been tentatively agreed between the authority and the licence holder.

We explained the meaning of these conditions to the residents, and outlined our views on the conditions to the other parties. We advised that residents could seek alternatives, and we suggested stronger wording for some of the conditions. In this way, the residents were able to be fully involved in the process in an independent way which did not take up the time and resources of the Council officers present. The hearing lasted all day. We presented an oral submission to the Sub-Committee, and introduced those residents who chose to speak. In particular, we pointed out the striking similarity between the Council's observations of the premises, and residents' actual experience, and referred the Sub-Committee to a number of examples in the hearing papers.

The parties discussed the proposed conditions. We proposed a number of amendments which made the conditions stricter and imposed more of obligations on the licence holder. In particular, a condition had been proposed that a door supervisor must be present for a period of one year. We said that it may assist, but only for that one year.

The Sub-Committee retired to consider their decision. They imposed a large number of conditions on to the licence to address the issues which residents had experienced. The Chair of the Sub-Committee specifically thanked the residents for attending and giving powerful and persuasive evidence.

Due to the length of the hearing, the residents had left by the time the decision was made. We wrote to advise the residents of the full decision and the conditions imposed.

Conclusion

In conjunction with the previous case involving an application for a new betting shop, the case was an excellent example of partnership working between residents and the Council. The review was initiated by the Council following residents' concerns which were brought to the Council's attention. The Council's observations supported the residents' evidence, and this provided very powerful and convincing evidence to the Sub-Committee.

Further case studies can be provided on request.

APPENDIX B: Website statistics

Document	No. of downloads in 2015
Guide to Licensing Act 2003	1037
Resolving problems with licensed premises	193
Resident's Noise Log	178
Outline of Project	429
Guide to a licence hearing	158
Step-by-step Guide to LA03	292
Step-by-step Guide to GA05	226
Step-by-step Guide to LG(MP)1982	215

Appendix C: Client comments/feedback

‘To whom it may concern,

Licensing Advice Project

In my capacities as a Soho Resident, long-term active member of the Soho Society and Chair of its Licensing Group for the last five or six years, I have come to consider the Licensing Advice Project an invaluable resource for people who live and work in Westminster.

As a resident, and speaking on my own behalf as well as that of other Soho residents, it is easy to feel powerless when a licensed premises plays music too loudly, or its customers cause obstructions or noise nuisance when entering or leaving the venue. We all hear the familiar line “Well if you don’t like it you shouldn’t live there”, which further reinforces feelings of helplessness. Luckily, the Licensing Advice Project provides free, well-informed advice and practical help. Given that Westminster has the highest concentration of licensed premises in the country, this project is every bit as necessary as it is helpful.

As Chair of the Soho Society Licensing Group, I often (when appropriate) advise residents who approach us with concerns about licensed premises to contact the Licensing Advice Project, and have heard back from many grateful residents who have been helped [by the Project]. Since taking over as Chair of the Soho Society Licensing Group, the help and advice I have received from [the Project] has been invaluable to my voluntary work as part of this local amenity group.

[The Project’s] efforts stand us – The Soho Society - in good stead for negotiating between licensed premises and residents. In this West End Cumulative Impact Area, where lively, noisy commercial venues abut residential homes, negotiation is an ever-present reality for just about everyone in the neighbourhood. The Licensing Advice Project gives residents a voice and helps them become a part of the negotiation process, ensuring better outcomes for both them and commercial interests. So the work of this project therefore helps maintain harmony in one of the busiest and most vibrant parts of London.

Yours faithfully,

[amenity society licensing Chair]

Bryanston and Dorset Square resident: ‘I’m writing to you to pass on how fantastic [the Project] has been in helping my husband and I to make an application regarding a license change in the Marylebone area. Just prior to Christmas I contacted your office to ask for help interpreting a very long and complex application for a hotel very near my home.

[The Project]:

- Helped me to understand a very complex application and pointed out the salient points I should be aware of

- Answered multiple queries I had about how to position my objections so that they would be appropriately heard by the council
- He commented on my draft application
- I was unable to make the hearing and to my amazement he offered to represent me at the hearing
- He met me after hours the week of the hearing (on his own time) to discuss the finer points of my submission so that he could represent me well
- He researched the history of the application so that he could advise me well and represent it properly at the hearing
- He phoned me straight after the meeting to tell me that my key concerns had been listened to and removed from the license change; then he followed it up with a summary email today

Because of [the] professional and very prompt and thorough help, I have been able to express my concerns appropriately about a topic I am not an expert in. I was able to brief fellow neighbours pre Christmas to encourage them to make submissions (which some of them did), and then I've been able to keep them abreast of developments. And most importantly, we have been successful in making changes to the license application.

I found the Project to be incredibly professional and helpful...[and] a major credit to your organisation.

Please pass this onto any appropriate people, other team members and funding bodies, as appropriate.'

Marylebone High Street resident: 'This is immensely helpful, especially the wording of your proposed additional conditions. Thank you again.'

Harrow Road residents: 'In addition to expressing my gratitude, I wanted to say what a stunning job you and [Council officers] did. I was hugely impressed with the case you each/all put together - both in terms of power of evidence and argumentation. The case was brilliantly put together and then unpacked for the sub-committee's benefit, and [] had no escape from the truth - top QC or not!'

Bayswater resident: 'I have been able to sleep so much better with your incredible help re the [] case which I am eternally grateful for.'

St James's resident: 'Thank you once again for your amazing support and advocacy at the hearing today. Even with a legal background I find these hearing a nervy process. They would have had a much better chance of getting their application through had you not been there and I am, as ever, very grateful for your help.'