



City of Westminster

# Licensing Committee Report

<b>Date:</b>	Wednesday 4 <sup>th</sup> July 2018
<b>Classification:</b>	For General Release
<b>Title:</b>	Licensing Appeals
<b>Report of:</b>	Director of Law
<b>Wards Affected:</b>	All
<b>Policy Context:</b>	A business-like approach
<b>Financial Summary:</b>	N/A
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## 1. Summary

1.1 This report provides a summary of recent appeal results.

## 2. Recommendation

2.1 That the report be noted.

## 3. Background

3.1 Over the last quarter we have been dealing with the appeals and Hemmings case as specified in section 4 and 5 of this report.

## 4. Licensing Act 2003 Appeals

### 4.1 **Sophisticats, 3 – 7 Brewer Street, London, W1F 0RD – Appeal dismissed**

4.1.1 This was an appeal by Devine Restaurants Ltd (“Appellant”) against two decisions of the Licensing Sub-Committee made on 1st December 2016 and 6th April 2017. Both appeals were conjoined and heard at Westminster Magistrates’ Court on 27th and 30th June 2017. Both appeals were dismissed because District Judge Baraitser concluded that both decisions of the Licensing Sub-Committee were not wrong. On 14 September 2017, the Appellant was ordered to pay £42,684 in relation to the Council’s legal costs. This sum has been paid in full.

### 4.2 **Crocker's Folly, 24 Aberdeen Place, London, NW8 8JR - Appeal withdrawn**

- 4.2.1 This Premises is a public house and restaurant which has an outside seating area. On 24 January 2017, the Premises Licence Holder, (Firestone Management Ltd) sought permission to vary the licence by extending the hours when the external outside area could be used from 21:00 hours to 23:00 hours each day. The application was opposed by Environmental Health, two ward councillors and 15 local residents.
- 4.2.2 The Licensing Sub-Committee refused the application on 27 April 2017 on the grounds that the variations would not promote the prevention of public nuisance licensing objective.
- 4.2.3 The appeal was scheduled to be heard at Westminster Magistrates' Court between 4 to 6 October 2017. However, on 10 August the Appellant withdrew its the appeal. At the costs hearing on 11 October 2017, the Appellant was ordered to pay the Council's legal costs of £15,180. It was agreed that this could be paid in instalments and the full sum has been received.

#### **4.3 London Film Museum, 45 Wellington Street, WC2E 7BN - Appeal withdrawn**

- 4.3.1 The premises licence allows the following licensable activities: exhibition of films, performance of dance, live music, performance of plays, anything of a similar description, late night refreshment and the sale by retail of alcohol until 00:30 hour from Monday to Saturday, with an earlier terminal hour on Sunday of 22:00. The Applicant, London Film Museum (Covent Garden) Ltd applied to extend the terminal hour for all the licensable activities to 02:00 Monday to Saturday, with closing by 02:30 hours. No change was proposed for Sundays. No conditions were proposed with the application or at the hearing.
- 4.3.2 The Police and the Licensing Authority objected to the variations sought but no other representations were received. On 6 July 2017 the Licensing Sub-Committee decided to refuse the application firstly, on the basis that the proposal would be contrary to the Council's Cumulative Impact Policy. Secondly, that no conditions had been offered to address the problems which could arise in relation to the substantial increase in hours and this would be contrary to the promotion of three of the licensing objectives. The Authority was also concerned that the premises would be able to hold 150 events per year, which could mean an event every weekend all year around.
- 4.3.3 The Premises Licence Holder appealed and the appeal was scheduled to be heard over two days on 25 and 26 January 2018.
- 4.3.4 The Appellant subsequently put forward a compromise offer to the Council which would have effectively resulted in another proposal to vary the licence. The Council decided that it would be inappropriate for the Council to agree to the proposal and it was rejected.
- 4.3.5 The Appellant subsequently withdrew their appeal on 21 November 2017. The Appellant agreed to pay the Council's legal costs of £15,387.50 and these have been paid.

#### **4.4 Swingers, 15 John Prince's Street, W1 – Appeal settled**

- 4.4.1 Swingers 2 Ltd sought the grant of a new licence which aimed to provide indoor golf and a number of restaurants within the premises. They originally sought a terminal hour for licensable activities until 00:30 hours on Sunday to Wednesday and until 01:30 hours on Thursday, Friday and Saturday. However, the hours were cut back to core hours at the hearing.
- 4.4.2 The application was opposed by the Police, Environmental Health and four local residents who were concerned about the initial hours requested. However, once the hours had been cutback one of the primary concerns remaining for the Police was the availability of glass receptacles in the areas where the golf was proposed to be played, should any conflict arise between groups. Consequently, the Licensing Sub-Committee granted the application on the 21 September 2017 subject to a number of conditions, including a condition that all drinks should be supplied throughout the Premises in polycarbonate vessels rather than glassware, save for when the Premises was used for private or pre-booked events within specified areas of the Premises with the consent of the Police (condition 40 on the licence).
- 4.4.3 Swingers 2 Ltd appealed against the Committee's decision only in relation to attaching the polycarbonate condition to the licence. The Appellant swiftly put forward a proposal to the Council to amend the condition which was acceptable to the Police and the Licensing Sub-Committee, and the appeal has been settled. The Appellant has paid the Council's legal costs of £5, 200.

4.5 **Continental Food and Wine, 27 Craven Road, Paddington, London, W2 3PX. – No Appeal**

- 4.5.1 This premises is a convenience shop which has permission to sell alcohol off the Premises from 08:00 hours to 23:00 hours Monday to Saturday and from 10:00 hours to 22:30 hours on Sunday.
- 4.5.2 On 14 December 2017, the Premises Licence Holder sought an extension of hours to midnight on Sunday to Thursday and to 01:00 hours on Friday and Saturday. This was refused because opposition from the Police, Environmental Health and the South East Bayswater Residents' Association.
- 4.5.3 The Council were advised that appeal had been received, subject to the court fee being paid. However, it has now been confirmed that appeal has been withdrawn. Very minimal legal work was undertaken and therefore no costs were sought from the proposed Appellant.

4.6 **The Windmill 17-19 Great Windmill Street, London W1D 7LQ - ongoing**

- 4.6.1 The Council received a renewal application of the sexual entertainment venue ("SEV") premises licence from Big Country Ltd to provide full nudity striptease, pole dancing and table dancing between the hours of 09:00 to 05:30 on each of the days Monday to Saturday and from 14:00 to 03:00 on Sunday at The Windmill. The Applicant did not ask to change the relevant entertainment or remove any standard conditions to the licence.
- 4.6.2 An objection to the application was received on 12 October 2017 and the objector stated that they believe in women's rights and do not believe in the objectification of women. They alleged that the club allows groping, pinching and slapping of the performers. The objector employed covert ex-police

officers to observe what happens within the venue and the statements from the officers were submitted as evidence before the Licensing Sub-Committee. In addition, the objector maintained that there were breaches to the licence conditions and that the current owners and management are not fit and proper persons to hold an SEV licence.

4.6.3 The Westminster City Inspectors also submitted an objection to the renewal application which advised that following an investigation it was noted that there were breaches of conditions, the CCTV needed to be improved to allow for better coverage of the premises and allegations of criminal activity taking place at the premises.

4.6.4 On the 11 January 2018 the Licensing Sub-Committee decided that it would not allow the renewal of the SEV licence application as it was considered that the Applicant was not suitable to hold the SEV premises licence.

4.6.5 Big Country Ltd has appealed this decision and the Case Management Hearing took place on 30 January 2018. The appeal has been listed for hearing at Hendon Magistrates' Court over three days commencing on 8 October 2018.

#### 4.7 **Belgrave Square Garden, Open Space, Belgrave Square, London SW1 Appeal ongoing**

4.7.1 An application was submitted by Belgrave Square Garden Events Committee and the amended Application before the Licensing Sub-Committee sought permission for the provision of films, plays, live music, recorded music, performance of dance and anything similar to dance; and late night refreshment (where applicable) until 23:30 on Monday to Thursday, until midnight on Friday and Saturday and 22:30 on Sunday.

4.7.2 In relation to the hours for sale of alcohol for consumption in the premises, the Applicant asked for:-

- 10:00 to 23:00 hours Monday to Saturday; and
- 12:00 to 22:30 on Sunday.

In respect of alcohol off sales, the applicant asked for:-

- 10:00 to 23:30 on Monday to Thursday; and
- 10:00 to midnight on Friday and Saturday; and
- 12:00 to 22:30 on Sundays.

The premises would close to the public thirty minutes after these terminal hours.

4.7.3 It was proposed that there would be 7 events per year with a maximum capacity of 1,000 people. In addition, the Applicant sought permission for non-standard timings on a maximum of 3 occasions per calendar year when licensable activities may continue until 01:00 hours. A number of conditions were also proposed by the Applicant.

4.7.4 A number of representations objecting to the application were received from the Police, Environmental Health and 34 from Other Persons. In addition, 24 representations were received in support of the application from Other Persons.

- 4.7.5 The Sub-Committee determined the application on 1 March 2018. It decided to grant the amended application on the basis that there would be a maximum of 5 events held per calendar year, as opposed to the 7 requested, and limited the capacity to a maximum of 500 people, as opposed to the 1,000 requested. In relation to the hours, the Sub-Committee granted Core Hours which reflected the amended application, as set out in paragraphs 4.7.1 and 4.7.2 above. The new premises licence was subject to a number of conditions that were imposed by the Sub-Committee.
- 4.7.6 The Applicant had appealed the decision and the hearing had been scheduled to take place on 15-17 October 2018 at Hendon Magistrates' Court. However, the Appellant withdrew the appeal on 12 June 2018. The Appellant has paid £3,500 towards the Council's legal costs.

## **5. JUDICIAL REVIEWS**

### **5.1 Hemming and others v Westminster City Council**

- 5.2 Members will be aware that Hemming and a number of other proprietors of sex establishments in Soho have challenged the fees charged by Westminster for sex shop licences. They have alleged that the Council is only entitled to recover the administrative costs of processing the application within the licence fee, and not the costs of monitoring and enforcing the whole licensing regime against unlicensed and licensed operators. They claimed that this would be contrary to the Service Provision Regulations which came into force in 2009 and the European Union Services Directive. At the time of the claim, Westminster were charging just over £29,000 for the annual licence fee. This was on the basis that the licensing regime should be self-financing.
- 5.3 The High Court and the Court of Appeal had both previously held that that the European Directive prevented Westminster from recovering the fees for monitoring and enforcing the licensing regime, against licensed and unlicensed operators. Westminster were therefore ordered to repay that element of the fee which related to monitoring and enforcement.
- 5.4 Westminster appealed to the Supreme Court which held in 2015 that local authorities were entitled to charge a fee towards the monitoring and enforcement of the licensing regime. The Supreme Court was clear that it was lawful to charge a licence fee which was payable in two tranches. The first fee, payable at the time when the application was made to cover the costs of processing the application. Then if the application was successful, a second fee to cover the costs of monitoring and enforcing the whole regime against licensed and unlicensed operators. This scheme is commonly called a Type A scheme.
- 5.5 However, the Court wanted clarification as to whether it was lawful under European law to charge one fee, covering both the costs of processing the application and a refundable fee for monitoring and enforcing the licensing regime, payable at the time the application was made, (commonly called a Type B scheme). The Court therefore referred the latter issue to the Court of Justice of the European Union ("CJEU"). Westminster originally adopted the Type B scheme but as the case progressed it adopted a Type A scheme. On 16 November 2016 the CJEU held that Type B scheme was unlawful as a

matter of European Union law.

- 5.6 On 19 July 2017 the Supreme Court decided decisively in favour of Westminster that the Council could recover a reasonable fee for the monitoring and enforcement of the sex licensing regime in Westminster (including the costs of enforcement against unlicensed operators).
- 5.7 The case has returned to the Supreme Court for final decisions to be made following the earlier decisions in the Supreme Court and the CJEU.
- 5.8 There are two issues outstanding, namely (1) obtaining an assessment as to what costs should be paid to Westminster by Hemmings and the other Operators to cover the monitoring and enforcement costs which are were not payable and (2) seeking an order for costs against the Claimants in relation to the hearing before the Supreme Court and the CJEU.
- 5.9 The Council has filed draft skeletons of arguments and draft orders with the Supreme Court so that these matters can be remitted to the Administration Court for determination and it is estimated that these matters will be resolved some time in 2018. The Council is also preparing its evidence in support of the applications outstanding.

## **6. Legal implications**

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

## **7. Staffing implications**

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

## **8. Business plan implications**

- 8.1 There are no business plan implications arising from this report.

## **9. Ward member comments**

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

## **10. Reason for decision**

- 10.1 The report is for noting.

If you have any queries about this report or wish to inspect any of the background papers please contact Heidi Titcombe, Principal Solicitor and Manager of the Planning, Highways and Licensing Legal Team on 020 7361 2617; email: [heidi.titcombe@rbkc.gov.uk](mailto:heidi.titcombe@rbkc.gov.uk)