

A similar point arises in relation to an application submitted by TLT in respect of premises at 29 Floral Street, WC2 (p 52) and where the contact details of the applicant are shown as Mr Elford of TLT. In that application, again, the details of the DPS have been redacted but a screenshot of the register (which isn't visible when printed) shows the DPS in that case was, in fact, **Mr Elford**, who it is assumed has no intention of selling alcohol from the premises under the licence?

Plans

TLT repeats its submission in respect of the plans. This submission is refuted for the reasons stated above. Whilst the plan itself was not attached to the application, it was made patently clear that the applicant would be relying on the existing plans for the premises. However, it should be noted, that the plan was and is, in fact, visible and attached to this application on the licensing authority's website (p 2). Any member who wished to view the plan would have been able to do so when accessing the application on the City Council's website. It is disingenuous to suggest that the application fails because the applicant did not himself attach the plan. The statute has been substantially complied with. There has been no substantial prejudice or injustice.

Status of a Shadow Licence

TLT again deny the validity of a shadow licence, notwithstanding substantial reference to the validity in both the *Extreme Oyster* case and the City Council's Statement of Licensing Policy.

A further point is taken, by way of conjecture, as to what would happen if the tenant's licence is varied? In that case, if the landlord wanted to retain the full benefit of having a "shadow" licence, they would need to similarly vary their licence to match the existing licence. The fact that they do not automatically vary or have a consistent licence does not mean it is not valid, only that if they wish to rely upon or transfer that licence subsequently, that licence may need to be varied to bring it into line with what was authorised under the tenant's licence.

Landlord and Tenant

The next point taken by TLT relates to the lease between the landlord and tenant. This is a matter of irrelevancy. Firstly, it is alleged that it was the intention of the parties that the landlord shall not make an application in respect of a premises licence. With respect, the tenant and their solicitors cannot say what the intention of the landlord was in respect of this clause.

In any event, matters concerning landlord and tenant are not matters for consideration by the licensing sub-committee. The tenant is perfectly able to seek a remedy in the Civil courts should they wish to enforce such a covenant. However, in order to do so the tenant must be able to demonstrate that they have suffered a damage or loss.

Conditions

Finally, it has been suggested that should the licensing sub-committee be minded to grant, that two conditions be attached to the licence as follows:

1. That premises licence number 19/00705/LIPN shall have no effect until such time as premises licence number 17/07479/LIPN has been surrendered;
2. That the licensable activities authorised by the licence can only be carried on at the premises by Tizzola Properties Ltd.

In respect of the first condition, if this were imposed or agreed then it would make the landlord's licence useless and worthless as it would only have effect if the tenant's licence is surrendered. One of the reasons for the landlord's application is in the eventuality of the tenant's insolvency.

As regards the second condition, if this were to be imposed or agreed then it would prevent the landlord from transferring the licence to a new tenant, as would be the likely outcome if the Landlord does step in for failure to pay the rent, or otherwise.

Statement of Licensing Policy

For all of those reasons and those stated before, the applicant urges to grant the application which is consistent with the council's statement of licensing policy as set out below:

3.2.11. Increasingly, applications have been made for premises licences at premises where a licence is already in force. Typically the applicant is the landlord of the premises where the licence holder of the licence already operating is their tenant. The landlord in many cases is seeking what they term a "shadow licence" (our emphasis) on the same or similar terms to the licence already existing.

3.2.12. The Act permits more than one licence to be in effect at any one time at the same premises and it has been established in law that the landlord may apply for a second or subsequent licence.

3.2.13. The council remains concerned however that the holding of additional licences has the potential to undermine the sanctions available to it in response to a review application under the Act. This would be the case if action was taken in respect of one of the licences in effect at the premises, but the premises continued to operate under the authority of a second licence which had not been affected by the review proceedings.

3.2.14. The council recognises that landlords have powers over their tenants outside of the licensing regime and would expect responsible landlords to exert that control to promote the licensing objectives. Where the landlord is also a licence holder of a premises licence in effect at the premises the council considers that the landlord has further responsibilities in respect of the operation of the premises to promote the licensing objectives.

Mr James Rankin of Counsel and Matthew Farrell of the Applicant will be in attendance at the hearing to answer any further questions that members may have.

Yours faithfully



Thomas & Thomas Partners LLP

tel: 020 7042 0412

email: athomas@tandtp.com