



City of Westminster

# Licensing Committee

<b>Item No:</b>	
<b>Date:</b>	24 March 2021
<b>Classification:</b>	For General Release
<b>Title of Report:</b>	Licensing Appeals
<b>Report of:</b>	Bi-Borough Director of Law
<b>Wards involved:</b>	Not applicable
<b>Policy context:</b>	A business like approach
<b>Financial summary:</b>	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3.1 There has been two new appeals since July 2020 as specified below, the first relating to the Wardour which was withdrawn and the second relating to Scotch has just been received.

### **3.2 100 Wardour, Ground Floor, Wardour Street London, W1F 0TN – withdrawn**

3.3 On 1 March 2019 a review application was issued by five local residents against 100 Wardour Street Limited, on the grounds that noise from live bands and the DJ was escaping from the Premises into their homes. The review was supported by Environmental Health, the Licensing Authority and six other local residents.

3.4 The Licensing Sub-Committee decided to adjourn the review application for three months to enable Environmental Health to carry out various sound tests from different flats to test sound equipment, including a noise limiter installed in the Premises, in order that a permanent solution could be found to prevent noise escaping into the residents' homes.

3.5 When the review hearing reconvened on 12 November 2019, the Licensing Sub-Committee decided to attach conditions to the licence to promote the prevention of public nuisance licensing objective.

3.6 Mr David Steele, one the residents, attempted to appeal the Decision in December 2019. However, the Court did not issue the appeal at that stage and the Council only became aware of the appeal in July 2020. It took some time to find out about the status of this appeal during the lockdown and Poppleston and Allen, representing the Premises have been liaising with Mr Steele with a view to resolving any outstanding noise coming from the Premises. They also contended that the appeal was not valid because it had not been issued in time and that issue was going to be debated at the Case Management hearing set for 16 December 2020 at Westminster Magistrates' Court. However, Mr Steele agreed to withdraw his appeal and has paid the Council £3,300 towards its legal costs on 16 December 2020 after the sealed Consent Order was received from the Court.

### **3.7 Scotch, Basement and Ground Floor 13 Mason's Yard, London SW1Y 6BU – new appeal pending**

3.8 Ground Support Equipment DMCC ("Applicant") applied for the grant of a new shadow licence in respect of the above Premises on the basis that the Applicant an interest in the business. There is a commercial dispute between Mr Lalic, the current manager of the Premises and the Applicant. The Applicant

purchased the Premises in 2012 for £280,000 without any contribution from Mr Lalic. He then refurbished the Premises at a cost of £675,000. Mr Lalic was a salaried employee and the Applicant received an income from the property. The Applicant and Mr Lalic operated the business together until relations had broken down. The Applicant wanted to protect his financial investment and sought the shadow licence.

- 3.9 The Applicant was seeking a shadow licence for the same hours and subject to the same conditions as the existing licence, namely:

Sale by Retail of Alcohol (On/Off Sales)

Monday to Saturday: 11:00 to 04:45 hours

Sunday: 12:00 to 22:30 hours

Live Music and Performance of Dance (Indoors)

Monday to Saturday: 09:00 to 05:00 hours

Sunday: 09:00 to 03:00 hours

Recorded Music (Unrestricted) (Indoors)

Monday to Sunday: 00:00 to 23:59 hours

Late Night Refreshment (Indoors)

Monday to Saturday: 23:00 to 05:00 hours

Sunday: 23:00 to 03:00 hours.

Together with seasonal variations for all licensable activities on New Year's Eve and New Year's Day

Hours Premises are open to the Public

Monday to Saturday: 09:00 to 05:30 hours

Sunday: 09:00 to 03:30 hours.

- 3.10 The application was opposed by 21 residents on the grounds of the prevention of public nuisance.
- 3.11 The Licensing Sub-Committee decided to refuse the application on 4 February 2021 on the grounds there was insufficient evidence in the operating plan to demonstrate how the Applicant would operate the business for the hours requested without undermining the licensing objectives. The Applicant has appealed the decision to Westminster Magistrates' Court. We are awaiting receipt of the summons when a hearing will be arranged to set the directions for the exchange of evidence and the hearing of the case. Members will be updated as the case progresses.

## **4. JUDICIAL REVIEWS**

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

- 4.2 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 was only entitled to recover the administrative costs of processing the application when assessing the licence fee, and not the costs of monitoring and enforcing the whole

licensing regime against unlicensed and licensed operators.

4.3 The High Court and the Court of Appeal both held 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 the element of the fees which related to monitoring and enforcement costs.

4.4 Westminster appealed to the Supreme Court who decided after various hearings on 19 July 2017 that Westminster 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).

4.5 An application has been made to the Administrative Court to recover the costs payable to the Council for monitoring and enforcing the licensing regime, but this has been delayed pending the COVID-19 pandemic.

## **5. RECORD OF APPEALS**

5.1 To date, 478 appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 477 of these appeals have been heard / settled / withdrawn etc. as shown below:

- 1 pending
- 59 dismissed
- 16 allowed
- 13 allowed only in part
- 166 settled
- 223 withdrawn.

## **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. Equalities Implications**

8.1 There are no direct equalities implications arising 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.

If you have any queries about this report or wish to inspect any of the background papers please contact Heidi Titcombe,  
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