



City of Westminster

# Licensing Committee Report

<b>Date of Committee:</b>	25 July 2022
<b>Classification:</b>	General Release
<b>Title of Report :</b>	Update of Licensing Appeals
<b>Wards Affected:</b>	All
<b>Decision Maker:</b>	For information
<b>Financial Summary:</b>	None
<b>Report's author:</b>	Ms Heidi Titcombe Principal Solicitor (Licensing and Highways Legal Team) <a href="mailto:Heidi.Titcombe@rbkc.gov.uk">Heidi.Titcombe@rbkc.gov.uk</a> For the Director of Law

## 1. **Introduction**

1.1 This report provides a summary of recent appeal results.

## 2. **Recommendations**

2.1 That the report be noted.

## 3. **Reasons for Noting**

3.1 To be aware of the current appeals being received and their outcome.

## 4. **Background**

4.1 Legal Services has been dealing with six appeals since March 2021, four of which have been withdrawn and two are pending determination as specified in section 5 below.

4.2 To date, 483 appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 481 of these appeals have been heard / settled / withdrawn, leaving two to be determined as shown below:

- 2 pending
- 59 dismissed
- 16 allowed
- 13 allowed only in part
- 166 settled
- 227 withdrawn.

## 5. **Appeals**

### 5.1 **Scotch, 13 Mason's Yard, London SW1Y 6BU – Withdrawn**

5.2 Ground Support Equipment DMCC (“Applicant”) applied for the grant of a shadow licence in respect of the above Premises on the basis that the Applicant had an interest in the business.

5.3 The application was opposed by 21 residents on the grounds of the prevention of public nuisance. The Licensing Sub-Committee refused the application on 4 February 2021 on the grounds that 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 appealed the Decision, but subsequently withdrew the appeal and agreed to pay the Council £18,391.20 in costs by the end of September 2021. Those costs have not been paid and we are considering the feasibility of pursuing a civil claim.

### 5.4 **56 Wardour Street, London, W1D 4JG - Withdrawn**

5.5 Wardour Street Trading Ltd applied for a new licence for a restaurant and bar for the above premises which is in the West End Cumulative Impact Zone. The application was opposed by Environmental Health, the Metropolitan Police, the Licensing Authority, Soho Estates Limited and the Soho Society on the grounds that public nuisance, and crime and disorder would be caused because of the potential numbers of customers entering the cumulative impact area.

5.6 On 3 June 2021, the Licensing Sub-Committee refused the application on the grounds that the premises would not promote the licensing objectives. The Applicant appealed and the case was scheduled to be heard at Westminster Magistrates’ Court on 7 February 2022. However, the Appellant decided to withdraw the appeal in October 2021.

5.7 The Council was entitled to recover its legal costs as a result of the withdrawal and Wardour Street Trading Ltd agreed to pay the Council £6,000 towards its legal costs in instalments of £1,000 a month. Wardour paid £1,000 in January 2022 but failed to pay any further instalments, so civil proceedings have been issued against them to recover the balance. Wardour have since paid a further £2,000, leaving a balance of £3,000 plus costs and interest. The civil claim is being pursued.

- 5.8 **Bellaria Restaurant, Basement and Ground Floor, 71 Great Titchfield Street, London, W1W 6RB - withdrawn**
- 5.9 We received two appeals in relation to the same premises, one from the Operator and the other from the Langham Hotel who did not consider the Operator should have any extension of hours.
- 5.10 By way of background on 18 March 2021 the Committee determined a variation application by Mr Nimet Oner who sought to extend the hours of the licence until 1:30 hours in the morning. Environmental Health opposed the application, as did a number of residents, including the Langham Hotel which is adjacent to the restaurant. The representations mainly related to the prevention of public nuisance licensing objective.
- 5.11 The Police had initially opposed the application, but they withdrew their representation when they were able to agree conditions with the Applicant which included the requirement to have a minimum of one door supervisor on duty from 21.00 hours to 30 minutes after the closing time, on the assumption that the hours would be extended to 1:30 am hours on Thursday, Friday and Saturdays.
- 5.12 The Licensing Sub-Committee granted the application in part by limiting the extension of hours to 00:30 hours on Thursday, Friday, and Saturdays, whilst retaining the door supervisor condition as agreed with the Police. The Applicant appealed the decision on two grounds. Firstly, that the door supervisor condition was unnecessary and disproportionate as the Committee had only extended the hours to 00:30 hours. Secondly, because there was an administrative error in the Decision, which referred to live music being permitted to 00.30, when it should have said midnight.
- 5.13 The Langham Hotel also appealed and argued that no extension of hours should have been granted because this would be contrary to the Council's licensing policy in terms of core hours; secondly, that the Committee failed to require an acoustic report to be provided and that the Committee had no regard of the objectors' submissions. The Langham Hotel wanted the case to be remitted back to the Committee for further consideration and they objected to the removal of the door supervisor condition.
- 5.14 The Case Management Hearing took place on the 2 November 2021, where the two appeals were joined, directions agreed, and the appeals were listed for a full hearing on the 4, 5 and 6 April 2022 at City of London Magistrates' Court. However, both Appellants subsequently withdrew their appeals and costs were negotiated whereby the Langham Hotel paid £3,200 costs on the 15 March and Mr Oner paid £3500 costs on the 31 March 2022. The costs have been paid in full.

### **5.15 ADMIRAL, 1A, BEDFORD STREET LONDON WC2E 9HH – pending**

5.16 Luxury Leisure applied under Section 159 of the Gambling Act 2005 (2005 Act) for the above premises to operate as a 24 hour Adult Gaming Centre (AGC). The Metropolitan Police supported the application.

5.17 The Licensing Authority, The City Inception Group, Covent Garden Community and Association, The Northbank Bid, and a local business owner opposed the application. They had concerns about the proposal to trade 24 hours a day in a high-risk area where there were vulnerable persons and the Applicant had failed to provide a comprehensive risk assessment to demonstrate that vulnerable persons would not be impacted by this new premises.

5.18 On 4 November 2021 the Licensing Sub-Committee refused to grant a premises licence because it did not have confidence that the risks to children and other vulnerable persons from being harmed or exploited by gambling had been suitably mitigated, given the compelling evidence produced by those opposing the application.

5.19 Luxury Leisure has appealed the Decision on the following grounds:

1. the Decision to refuse was wrong;
2. the Sub-Committee failed to take into account all relevant considerations; and
3. the Sub-Committee took into account irrelevant considerations.

5.20 The appeal will be heard in City of London Magistrates' Court over two days, starting on 19 September 2022 and Members will be advised of the outcome.

### **5.21 16 Charles Street, London W1J 5DR – pending**

5.22 16SC Operations Ltd applied for the grant of a new premises licence for a fine dining restaurant until 23:30 on Mondays to Thursdays, until midnight on Fridays and Saturdays and until 22:30 on Sundays. The premises is not in a cumulative impact area so the application was in accordance with policy.

5.23 The Police, Environmental Health, and 27 local residents along with the Rosebery Mayfair Resident Association Limited (RMRAL) and Balfour Property Investments (BVI) Ltd (BPIL) objected to the application on the grounds that the premises would undermine the licensing objectives. However, the Police withdrew their objection after agreeing certain conditions with the Applicant.

5.24 Prior to the hearing the residents association and BPIL agreed certain conditions should be attached to the licence which included, However, the Sub-Committee granted the licence on 18 November 2021, subject to a number of conditions, but did not impose some of the conditions requested because the Committee considered they were not appropriate and proportionate.

5.25 RMRAL and BPIL appealed the Decision on the grounds that their conditions were not attached to the licence. The Council is awaiting the date of the Case Management hearing at the Magistrates' Court when directions will be given for the disposal of the appeal.

## **6. JUDICIAL REVIEWS**

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

6.2 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.

6.3 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 was therefore ordered to repay this element of the fees which related to monitoring and enforcement costs.

6.4 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).

6.5 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. The casework team at the Administrative Court have referred this case to a Casework Lawyer and the case will be listed for a directions hearing.

## **7. Financial Implications**

7.1 Financial implications should be completed by the relevant Finance officer.

## **8. Legal Implications**

8.1 Any applicant making an application under the Licensing Act 2003 and any other party who has made a representation, is entitled to appeal a decision of the Licensing Sub-Committee provided they apply to the Magistrates' Court within 21 days of the full licensing decision being issued. Such an appeal takes the form of a complete rehearing of the case, where new witnesses can be called and often such an appeal lasts many days. A Magistrate's Court has the power to grant or dismiss the appeal or to remit the case back to the Licensing Sub-Committee for reconsideration.

8.2 A Magistrates' Court has the power to make any order it considers appropriate in terms of legal costs. If the Committee provides a fully reasoned decision of the application, the onus is on the Appellant to prove that the Sub-Committee's decision was wrong.

## **9. Carbon Impact**

9.1 It is believed that there is no carbon impact as a result of this report as this relates to appeals and judicial proceedings.

## **10. Consultation**

Ward Councillors have not been consulted as the determination of licensing applications is a statutory function and the Council is an automatic party if an applicant or other party decides to appeal the decision of the Licensing Sub-Committee.

## **11. Equalities Implications**

11.1 The Council must have due regard to its public sector equality duty under Section 149 of the Equality Act 2010. In summary section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

(c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

11.2 Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

11.3 The Council believes there are no direct equalities implications arising from this report.

**If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:**

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