



City of Westminster

Licensing Committee Report

Date of Committee:	17 July 2023
Classification:	General Release
Title of Report:	Update of Licensing Appeals
Wards Affected:	All
Decision Maker:	For information
Financial Summary:	None
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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 four licensing appeals since March 2023, one of which has been settled and three are pending determination, as specified in section 5 below. Legal Services is also dealing with two pending

judicial reviews as set out in section 6 below.

- 4.2 To date, 489 licensing appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 486 of these appeals have been heard / settled / withdrawn, leaving three to be determined as shown below:

- 3 pending
- 59 dismissed
- 16 allowed
- 13 allowed only in part
- 168 settled
- 229 withdrawn
- 1 out of time.

5. **Appeals**

5.1 **Greggs, 1-4 Leicester Square, London, WC2H 7NA – settled**

- 5.2 As Members will recall Greggs PLC applied for a premises licence to permit the late-night sale of hot food and drinks from 23:00 hours to 05:00 hours the following day, seven days a week in the heart of Leicester Square. The application was opposed by the Metropolitan Police, Environmental Health, the Licensing Authority, three local Ward Councillors and one resident. On the 29 July 2022, the Sub-Committee refused to grant the application on policy grounds stating that the Appellant had failed to demonstrate exceptional reasons as to why the application would not have a negative impact on the West End Cumulative Impact Zone and promote the licensing objectives.
- 5.3 Greggs appealed the Committee Decision, and the appeal was due to be heard over three days commencing on 16 May 2023 at Westminster Magistrates' Court. However, Greggs proposed a compromise on 5 May 2023 and after some discussions, it was agreed to grant a late-night refreshment licence to Greggs allowing them to sell hot drinks (but not hot food) on Sunday to Wednesday from 23:00 hours to 00:00 and on Thursday to Saturday 23:00 hours to 02:00 hours. The licence is also subject to significant conditions which include the installation of CCTV at the premises, the use of door supervisors and the clearing of litter outside the premises. Each Party has agreed to bear their own costs. The hearing date was therefore vacated.
- 5.4 Prior to the Courts approving the Consent Order, the agreement attracted some inaccurate and adverse press coverage, with Gregg's claiming a victory. The Order was subsequently approved by the Courts on the 26 May and the Premises Licence issued confirming the position.

5.5 There has been ongoing issues with Greggs regarding their interpretation of the meaning of 'hot food' under Schedule 2 of the Licensing Act 2003.

5.6 MacDonalds, 178 - 180 Edgware Road, London, W2 2DS – pending

5.7 MacDonalds applied for the extension of hours of their late-night refreshment licence which would enable them to effectively operate 24 hours a day. The Premises is situated in a Special Consideration Zone. The application attracted representations from residents, the Police, and Environmental Health.

5.8 The Licensing Committee refused MacDonalds' application to vary their Premises Licence on 9th March 2023 and MacDonalds appealed to the Westminster Magistrates' Court. The Case Management Hearing took place on 6 July and the hearing will take place at the City of London Magistrates' Court over three days on 21, 23 and 24 November 2023.

5.9 Park Street Hotel, 14 Park Street W1K 2HY – pending

5.10 This is an appeal brought by Park Street Management Co Ltd who are residents of Fountain House who opposed the grant of a new Premises Licence basically on the grounds that the application undermines the licensing objectives.

5.11 The Premises propose to operate as a 6-star hotel and restaurant with residential apartments and associated facilities. The Premises are in the West End Ward but not within the Cumulative Impact Zone or the Special Consideration Zone so there was no policy presumption to refuse the application, which had to be determined on its merits. Representations were received from Environmental Health, Park Street Management, Fountain House and five individual local residents.

5.12 The Case Management Hearing will take place on 11 August 2023 at Westminster Magistrates' Court when directions will be given for the determination of the appeal.

5.13 Piano Works, Clareville House 47 Whitcomb Street London WC2H 7DH – pending

5.14 TDC ENTS LTD appealed the Licensing Committee's decision of 27 April 2023 to refuse to grant a new Premises Licence for a live music venue with a capacity of 700 persons. The Premises is located in the West End Cumulative Impact Zone.

5.15 The Council is awaiting receipt of the summons and details of the Case Management Hearing from the Court. Members will be updated at the next Licensing Committee on the progress of this appeal.

6. JUDICIAL REVIEWS

6.1 Hemming and others v Westminster City Council - pending

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) and this element needs to be determined by the Court.

6.5 The Administrative Court gave directions to resolve the remaining issues on 13 December 2022. This required the Operators of the licensed premises to apply for permission to rely on certain grounds (in accordance with the Order of the Supreme Court). No application has been made to date. Another directions hearing has been scheduled to take place on the 10 May 2023 where further directions will be given.

6.6 The Claimants failed to make an application for permission or to comply with the directions. As a result, the Council made an application for summary judgment.

6.7 At the hearing on 10 May 2023, the Claimants were represented. They informed the Court that they oppose the Council's application for summary judgment and asked for an adjournment to enable them to serve grounds and evidence in response. The Claimants have failed to serve evidence, but the application for summary judgment will be considered at the High Court on 25 July 2023.

6.8 Montpeliano, 3-17 Montpelier Street, London, SW7 1HQ - pending

6.9. Montpeliano is a restaurant which has held a converted premises licence since 2005. The Premises was taken over by another operator Monte London

Limited, who issued a judicial review against the Council on 7 June 2023 for the following reasons:

(a) They contend the Council's decision to amend the licence on its website to reinstate "restaurant conditions" which were omitted in October 2019 from the licence due to an administrative error was unlawful, and

(b) Against the Licensing Authority's decision on 17 March 2023 to refuse to grant a minor variation of the Licence, and

(c) Against the Licensing Authority's decision on 24 April 2023 to refuse to grant a second minor variation.

6.11 The Council filed its Grounds for resisting the claim on 28 June in the High Court, who will now decide whether or not to grant leave to appeal. Members will be updated of the Decision in due course.

7. Financial Implications

7.1 Legal costs are incurred in dealing with appeals, but the Licensing Authority seeks to recover its costs where it is appropriate to do so.

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. Equalities Implications

9.1 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.

9.2 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.

9.3 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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