



# City of Westminster

## Licensing Committee Report

<b>Date of Committee:</b>	25 September 2024
<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
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### **Introduction**

- 1.1 This report provides a summary of recent appeals and other important cases for Licensing.

### **2. Recommendations**

- 2.1 That the report be noted.

### **3. Reasons for Noting**

- 3.1 To be aware of the current appeals and their outcome. Members are also asked to note the two prosecutions specified in paragraph 7 of this report.

### **4. Background**

- 4.1 Legal Services has been dealing with nine licensing appeals since December 2023, two of which have been settled, six new appeals have been received, resulting in seven pending determination (including the Vanity costs application), as specified in section 5 below. Legal Services has also been dealing with one judicial review as set out in section 6 below.
- 4.2 To date, 497 licensing appeals have been received since the Council took over the licensing functions from the Magistrates' Court in February 2005. 490 of these appeals have been heard / settled / withdrawn, leaving seven to

be determined as shown below:

- 7 pending
- 60 dismissed (but still dealing with Vanity costs application)
- 16 allowed
- 13 allowed only in part
- 170 settled
- 230 withdrawn
- 1 out of time.

## 5. **Appeals**

### 5.1 **MacDonalds, 178 - 180 Edgware Road, London, W2 2DS – settled**

5.2 MacDonalds applied for the extension of hours of their late-night refreshment licence which would enable them to effectively operate 24 hours a day. Members will recall that this appeal was settled whereby MacDonalds can provide late night refreshment until 2.30 am, but only on Fridays and Saturdays.

5.3 This compromise was on the basis that the licence was subject to various conditions including requiring SIA door staff and an area for delivery drivers to wait on the premises. The Appellants also agreed to pay the costs incurred by the Council in instructing Counsel of £15,000 and these costs were paid on 5 December 2023.

### 5.4 **Park Street Hotel, 14 Park Street W1K 2HY – pending**

5.5 The Committee granted a premises licence for 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.

5.6 Representations were received from Environmental Health, Park Street Management, Fountain House and five individual local residents. This 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.

5.7 The appeal was originally scheduled to take place over four days at Westminster Magistrates on 20, 21, 22, 23 May 2024. However, the appeal could not be accommodated by the Court so a new hearing date has been scheduled to take place for the 17, 18 and 19 December 2024 and Members will be updated once the appeal has been completed.

**5.8 Vanity Bar and Night Club at 4 Carlisle Street, London, W1D 3BJ – costs hearing pending**

5.9 This is an appeal against the refusal of the Licensing Sub-Committee on 25 May 2023 to renew the Sexual Entertainment Venue (SEV) licence under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. The main grounds of refusing to renew the licence was because of the constant breaches of the licence and the Committee having no confidence that the operator would be able to comply with the conditions of the licence.

5.10 The appeal was heard on 5, 6 and 7 March 2024 at Westminster Magistrates' Court when the Court dismissed the appeal.

5.11 As the Appeal was dismissed, the Council has sought to recover its legal costs of defending the appeal. The Appellant is contesting the amount of costs payable and both parties have been required to submit written submissions to the Judge so that she can make a decision on the papers. The Council is required to serve its submission by 20 September. Once the Judge has all the information, she will decide whether to award costs to the Council and if so, what amount should be payable by the Appellant. Members will be updated of the outcome at the next Committee hearing.

**5.12 Vanity Bar and Night Club at 4 Carlisle Street, London, W1D 3BJ – Crown Court appeal - pending**

5.13 As the Magistrates' Court dismissed the appeal in relation to the Sexual Entertainment Venue licence, the operator is entitled to appeal to the Crown Court to overturn the dismissal. The Council anticipated that this would happen because the Appellant lost his licence.

5.14 This appeal is a fresh hearing of the appeal, where new evidence can be produced. The appeal is scheduled to be heard at Southwark Crown Court on 26, 27 and 28 February 2025. Until the appeal is determined the operator is entitled to continue to operate the sex entertainment venue.

**5.15 Greater London Authority (GLA) – Victoria Embankment – settled**

5.16 On 25 April 2024, the Licensing Sub-Committee considered three applications from the GLA to have fan zones in Trafalgar Square (19,999 fans), Hyde Park (19,999 fans) and in Victoria Embankment (29,000 fans) to support the UEFA Champions League Football Championship which was taking place in the United Kingdom 1 June 2024. The first two applications were approved subject to conditions. However, there was substantial opposition from local residents and businesses concerning the Victoria Embankment application. This proposed to close off the road next to the Embankment Underground station between Westminster Bridge and Blackfriars Bridge, including Villiers Street

and Victoria Embankment Gardens.

- 5.17 After considering the application, the Committee decided to refuse the third application because the GLA had failed to provide sufficient evidence to satisfy the Committee that this application would promote the licensing objectives. This was despite the event being a National Strategic event for football. The Committee confirmed the application had been refused at the outcome of the hearing as the GLA needed to be able to confirm the position to the various stakeholders and contractors who were planning to run the fan zones.
- 5.18 The GLA wanted to submit a revised proposal to the Council. However, it did not have time to submit a new application before the football matches were due to take place, so its only option was to issue an appeal to Westminster Magistrates' Court. The problem was that licensing appeals are not normally heard in the Magistrates' Court for at least 9 months, by which time the football match would be over. Consequently, the GLA wanted the Council to agree to settle the appeal, based on different proposals which were considered by the Licensing Sub-Committee and because of the need to confirm that the scheme could proceed with its stakeholders and contractors in readiness for the set up, it was aiming for that appeal to be settled in less than two weeks.
- 5.19 As the original application had been considered at length in an open hearing only days before the appeal was due to be lodged, the Council had to insist that any new proposals had to be served on and considered by all the Responsible Authorities and other parties who had filed a valid representation to the original application. This was to ensure openness and transparency and to ensure that the issues raised in the representations were addressed.
- 5.20 The GLA applied for the appeal on 30 April 2024 and submitted revised proposals, which could be circulated to all the parties on 2 May 2024. Consultation meetings were held with Responsible Authorities and other objectors who could attend, and all parties were given an opportunity to submit their written comments in relation to the proposals by 10 May 2024.
- 5.21 The revised proposals basically reduced the area of the fan zone to the area around Victoria Embankment Gardens, as opposed to closing the whole road between Westminster and Blackfriars bridges, as well as substantially reducing the capacity to 13,600 fans and increasing security and stewards, as well as agreeing to attach a number of conditions to promote the licensing objectives.
- 5.22 The appeal was compromised by a consent order which was approved by the Court on 17 May 2024 and the GLA paid the Council's legal costs of £39,085 to the Council on 19 June 2024.

**5.23 Greater London Authority (GLA) – Trafalgar Square – pending**

5.24 As explained in paragraph 5.16 above the GLA, the Licensing Sub-committee on 25 April 2024, also approved a fan zone in Trafalgar Square for 19,999 fans subject to conditions. This permission was for a permanent licence, not just the Champions league matches in June 2024. After the hearing the GLA realised that three of the conditions would cause a problem with some of the events they wished to hold in Trafalgar Square so they appealed and suggested alternatives to three of the conditions. The Council is considering these proposals.

5.25 The Court have yet to issue the summons in relation to this appeal, so no directions have been set. If a settlement is able to be reached it will need to be approved by the Court. Members will be updated at the next Committee.

**5.26 Sunset Strip, Basement to First Floor, 30 Dean Street, London, W1D 3QL – pending**

5.27 On 16 May 2024, the Licensing Sub-Committee decided to revoke the Sexual Entertainment Venue (SEV) licence and revoke the Premises Licence for these premises, following a review requested by the Metropolitan Police. The Committee agreed with the Police and the Licensing Authority that there was a culture of non-compliance with the conditions of the licence which were embedded within the company and the holder of the licenses. Secondly, that the measures taken since 17 January 2024 were insufficient to demonstrate the suitability of the licence holder and that the only option left to the Sub-Committee was to revoke the Premises Licence and SEV Licence.

5.28 The review was supported by Environmental Health, the Licensing Authority and several local residents.

5.29 Sohomead Ltd have appealed both decisions to the Westminster Magistrates' Court. The Case Management Hearing will take place on 25 September 2024, when the Court will give directions for the disclosure of evidence and set a date for the hearing. Members will be updated when the appeal has been completed.

**5.30 Basement and Ground Floor, 13 Meard Street, London, W1F 0ES – pending**

5.31 Pontstreet9 Limited applied for a new premises licence to operate a gin distillery and a shop at ground floor level. The application is located in the West End cumulative impact area. Representations were received from Environmental Health and twenty-two local residents, including the Soho Society. The Licensing Authority and two other local residents withdrew their representations before the decision was made.

- 5.32 On 18 July 2024, the Licensing Sub-Committee approved the application subject to conditions attached to the licence.
- 5.33 The Soho Society have appealed the decision on the basis of procedural unfairness as they argue that the London Fire Brigade evidence should not have been allowed without their consent and they would like some amendments to three conditions. The Soho Society have instructed an expert to review the evidence presented by the Fire Brigade and the Case Management Hearing on 4 September 2024 has been adjourned, at the Appellant's request to 30 October 2024 in Westminster Magistrates' Court.
- 5.34 **14 – 22 Ganton Street, London, W1F 7BS – pending**
- 5.35 On 18 July 2024, Shaftesbury AV Ltd, the Landlords of the above premises, applied for a shadow licence. The Licensing Authority withdrew their representation, leaving the representation from the Soho Society. The application was granted subject to conditions.
- 5.36 The Premises Licence Holder has appealed one condition which was attached to the licence, which is a slightly modified version of condition MC97, stating 'This shadow licence will not take effect when the current licence (21/02690/LIPDPS or successor reference) is in operation, or is surrendered, suspended or revoked.' The Appellant will be proposing additional conditions to the Council with a view to compromising the Appeal.
- 5.37 The Case Management Hearing will take place at Westminster Magistrates' Court on 2 October when directions will be made for the determination of the appeal.

## **6. JUDICIAL REVIEW**

- 6.1 **Hemming and others v Westminster City Council – pending Anghel please update**
- 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 the latest case was to determine the actual amount payable.

6.5 On 25 July 2023, the action against three of the Claimants was settled by consent as follows:

(1) The First Claimant (Timothy Martin Hemming) has agreed to pay the Council the sum of £179,978

(2) The Second Claimant (James Alan Poulton) has agreed to pay to the Council the sum of £355,956.

(3) The Third Claimant (Harmony Limited) has agreed to pay to the Council the sum of £179,978.

All these sums have been paid to the Council, including £40,900 towards the Council's legal costs.

6.6 Members will recall Gatsile Limited and Swish Publications Limited are dissolved companies and the claim could not be pursued against them any further.

6.7 Darker Enterprises Limited also went into liquidation and had no funds and therefore the matter cannot be pursued further.

6.8 Winart Publications limited went into liquidation but had funds available and after negotiations with the Council agreed to pay £80,000 to the Council and this sum has also been paid. This brings an end to the action.

## **7. Prosecutions**

### **7.1 Global Radio and others v Westminster City Council – pending**

7.2 The Council is being prosecuted under the Environmental Protection Act 1990 by Global Radio who claim that the Council is failing to take action to abate an alleged statutory nuisance. Members will recall that the Council introduced a busking scheme in April 2021 to cover certain areas in the borough, which included the West End. This scheme was introduced under part V of the London Local Authorities Act 2000.

7.3 This scheme allows licensed buskers and street entertainers to busk at a pitch in Leicester Square. Amplified instruments can be used. It has transpired that a number of unlicensed buskers also busk at this pitch without permission. Global Radio have offices near this pitch, and they claim buskers are causing a statutory nuisance when they perform, and they want the Council to take action to stop the alleged statutory nuisance caused. The Council have pleaded not guilty to the prosecution. Directions have been given on 28 August 2024 for the disclosure of evidence and the trial will take place at the City of London Magistrates' Court on 15, 16, and 17 January 2025. Members will be updated

of the outcome of this prosecution once the trial has been heard.

#### 7.4 **Mr Andrabi – prosecution awaiting judgment on a preliminary issue**

7.5 The Licensing Act 2003 requires a person to have a premises licence if they sell hot food or drink between the hours of 23:00 and 05:00 the following day. Mr Andrabi does not have a premises licence and a prosecution has been issued by the Council against Mr Andrabi for supplying late night refreshment from French Tacos, 414 Harrow Road, London W9 2HU without having a premises licence.

7.6 Mr Andrabi contends that he does not need a licence because hot food and drink is being supplied by a third party delivery company/agent, as opposed to from his restaurant premises which are not open to members of the public between 23:00 and 05:00. Mr Andrabi is basically raising a legal argument that this takeaway/delivery activity does not come within the definition of late-night refreshment.

7.7 The Council rejects this argument. The Parties have agreed that the legal issue should be determined as a preliminary issue and the hearing took place on 19 July 2024 at Westminster Magistrates' Court. The Court had intended to hand down its judgment on 20 August but the Court needs more time so judgment will now be handed down on 24 October 2024. A copy of the judgment will be circulated to Members when it is available.

### 8. **Legal Implications**

8.1 Any applicant making an application under the Licensing Act 2003 or Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, 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 Under paragraph 27 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, the holder of a SEV is further permitted to appeal to the Crown Court within 21 days of a Magistrates' decision.

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



9. **Financial Implications**

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

10. **Equalities Implications**

- 10.1 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.

- 10.2 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.

- 10.3 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 disclosable Background Papers, please contact:**

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