

**Report of City Solicitor**

**Report to Licensing Committee**

**Date: 24 July 2012**

**Subject: Appeals under the Licensing Act 2003**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Please see Appendix 1	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4.5 Appendix number: 1	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**Summary of main issues**

1. This report relates to appeals which have been lodged against decisions of the Licensing Sub-committees under the provisions of the Licensing Act 2003. It outlines the current position in relation to each appeal and the predicted hearing date if known.
2. The report identifies the outcome of appeals in relation to Players Bar on Albion Street and the Cocktail Bar Call Lane (both of which raised issues of cumulative impact) Sainsbury's Street lane and Shell UK (Pool Bridge)

**Recommendations**

3. That Members note the contents of this report and request further updates as matters are dealt with.

## **1 Purpose of this report**

- 1.1 This report outlines for Members information the appeals which have been lodged against decisions of the Licensing Sub-committees made under the Licensing Act 2003 and the outcome of recent appeals.

## **2 Background information**

- 2.1 Decisions of the Licensing Sub-committees can be the subject of an appeal to the Magistrates' Court under Section 181 of the Licensing Act 2003. Schedule 5 to the Act sets out the detail of who may appeal each decision. The applicant can appeal against a partial or full refusal of a grant or variation. The applicant for any review and the respondent licence holder may appeal any review decision. Responsible Authorities or Interested Parties who made relevant representations in relation to grants, variations, or reviews may also appeal. In the cases referred to in this report, each of the appeals has been lodged by the applicant for the grant or variation of the licence.
- 2.2 On appeal, the Magistrates' Court can:
- Dismiss the appeal;
  - Substitute any other decision which could have been made by the Licensing Authority for the decision actually made by the Sub-committee; or
  - Remit the case back to the council to dispose of in accordance with the direction of the Court.
- 2.3 In making the decision, the Magistrates stand in the shoes of the Licensing Authority and must take into account the council's own licensing policy and the section 182 Guidance issued by the Secretary of State.
- 2.4 Recent case law, R (On the application of Hope and Glory Public House Ltd) v City of Westminster Magistrates Court [2011], indicates that the Court can only substitute its own decision or remit the case where it is satisfied that the decision of the sub-committee was wrong. Otherwise it must dismiss the appeal. The appellant bears the burden of persuading the Magistrates' Court that the decision of the Licensing Sub-committee was wrong. The fact that a different decision could legitimately have been made on the same facts does not necessarily mean that the decision was wrong. In making their decision, the Magistrates are entitled to take into account any fresh information arising since the subcommittee dealt with the matter. That might in itself suggest a different outcome to the decision.
- 2.5 In most cases it is unusual for the court to order costs against the Licensing Authority since it is clear that the sub-committee would have acted in good faith when making the decision on the basis of the information before them.

## **3 Main issues**

- 3.1 A number of appeals have been lodged recently against decisions of the Licensing Subcommittee and these are set out in the table at Appendix 1. There is no single reason why the number of appeals has increased. The appeals lodged raise a number of different issues, including the importance of the Cumulative Impact Policy, whether garage premises are excluded premises under section 176 of the Licensing Act, and issues relating to the appropriateness and correct wording of conditions. There has been no single sub-committee which has had more decisions appealed and there has been no change in approach to decisions.
- 3.2 In the appeals relating to Players Bar on Albion Street and a proposed Cocktail Bar on Call Lane the sub-committee refused the applications on grounds of cumulative impact. In the Players appeal an extension of existing hours was refused whilst in the Call Lane case it was an application for a new licence that was rejected. Both venues were in the city centre CIP area. In both cases the court upheld the decision of the sub-committee to refuse licences and dismissed the appeals, ordering the appellant to pay costs to the council.
- 3.3 The appeal relating to Sainsbury's on Street lane raised issues on the need for and wording of certain conditions relating to noise and litter. Following discussions between the venue and the planning and environmental health services agreement was reached and the licence was issued with amended conditions.
- 3.4 In the Shell UK appeal the issue was s176 Licensing Act 2003 which defines excluded premises. Premises which are primarily a garage are excluded premises so that any licence granted under the Act does not have effect to authorise alcohol sales. The sub-committee considered statistical evidence on volume of sales and concluded that the premises were primarily a garage, favouring the police interpretation of the figures. Unusually the Court ordered the costs of the appeal to be paid by the council although they accepted that the police had put forward their interpretation in good faith. The decision to award costs is being challenged by the Council in the High Court.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 This report does not raise any issues of consultation and engagement.

### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 This report does not raise any issues relating to Equality and Diversity, Cohesion and Integration.

### **4.3 Council Policies and City Priorities**

4.3.1 In making their determinations, the Sub-committees have regard to the council's Statement of Licensing Policy. The Magistrates hearing the appeal must also have regard to the same policy.

### **4.4 Resources and Value for Money**

4.4.1 Where an appeal is lodged then the council is obliged to respond to that appeal. It is possible for the council to be awarded its costs of defending the appeal. Costs are normally awarded where the appeal is dismissed save in exceptional circumstances.

#### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 This report is potentially exempt as a number of the cases listed in Appendix 1 are the subject of ongoing proceedings and therefore discussion of the appendix may raise matters to which a claims to legal professional privilege could be upheld.

#### **4.6 Risk Management**

4.6.1 The ability of the council to successfully defend appeals is influenced by the quality of decision making. That, in turn, relies upon Members being given appropriate training, having the correct information provided to them in reports and having access to timely and accurate advice where required.

### **5 Conclusions**

5.1 There has been an increase in appeals under the Licensing Act 2003. This increase does not relate to the activities of any particular sub-committee or any particular type of decision.

5.2 The decisions of the courts do not indicate any need to change the information given to members or for additional training for Members beyond that currently offered.

### **6 Recommendations**

6.1 Members note the content of this report.

### **7 Background documents**

7.1 None

As at 13/7/12

**LIVE CASES**

APPELLANT	WARD	SUMMARY OF APPEAL	DATE	OUTCOME
Shell UK, Pool Bridge	Adel and Wharfedale	<p>Under section 176 of the Licensing Act 2003 any premises licence granted to an excluded premises ceases to have effect. The garage / petrol station can be an excluded premises depending upon whether it is used primarily as a petrol station or as a corner shop. This can be assessed in different ways involving an analysis of trading figures at the premises. In this particular case, based upon the information provided, the Sub-committee concluded that these were excluded premises and declined to issue a licence.</p> <p>On appeal the magistrates misunderstood the police evidence and stated that the police conceded their figures were misleading and had misled the committee. In fact the police were saying that it was Shell's figures that were misleading. However an appeal against that would be difficult and since a number of other garages do have licences we have reluctantly decided not to take the matter further. We are challenging the costs decision.</p>	14 and 15 May 2012	<p>Licence granted by Court. Costs awarded to appellant of £19 000.</p> <p>Costs decision being appealed.</p>
Shell UK, Royds Beck, Wortley	Wortley	<p>The same issues are raised as in the Pool Bridge case above.</p> <p>Offer made to settle by granting licence with both parties paying their own costs</p>	18 July 2012	

APPELLANT	WARD	SUMMARY OF APPEAL	DATE	OUTCOME
Yorkshire County Cricket Club (Headingley Stadium)	Headingley	<p>Yorkshire County Cricket Club previously applied for a licence to hold outdoor music events at Headingley Stadium in the closed season. The application attracted significant opposition from Planning, Environmental Health, local ward Members and residents. A licence was granted but was subject to conditions requiring the event to finish at 9pm and to keep below a decibel level of 65db. Application was made to vary the licence when the cricket club established that they could not host the sort of events they wished to with those restrictions. On variation, the Subcommittee revised the terminal hour for the licence from 21:00hours to 23:00hours (outside planning hours) but felt that the stadium was correctly classified as an urban and rural stadium and therefore maintained the 65db level as recommended in the Code of Practice on Environmental Noise Control at Concerts.</p> <p>A planning application is to be submitted to deal with the discrepancy between the licensing hours and the planning consent on the basis that they could not use any licence granted without resolving the planning situation. The appeal has been adjourned pending a planning decision</p>	tbc	
Brewdog Ltd	City and Hunslet	<p>This was an application for the grant of a new licence in a CIP and hotpsot area behind the Corn Exchange. It was refused on the basis of the Cumulative Impact Policy.</p> <p>The venue is keen to reach agreement that will allow them to open and has offered shorter hours and removal of music from the licence. They also say they operate in other CIP areas in the UK but it has been established that they have not been granted a new licence in any CIP area but transfers of existing licences</p>	6/7 September	

APPELLANT	WARD	SUMMARY OF APPEAL	DATE	OUTCOME
Macy's	Headingley	<p>This was an application for the grant of a licence for a New York / European style deli, which proposed to sell a limited range of alcohol with foods and for takeaway purposes. The application attracted opposition from residents, ward Members and the Environmental Protection Team on the basis of cumulative impact.</p> <p>The Subcommittee determined that the Cumulative Impact Policy did not apply as the premises were not alcohol led. They therefore resolved to grant a licence but restrict the hours and impose strict conditions on the licence to ensure the promotion of the prevention of public nuisance objective and to prevent the premises from becoming alcohol led in future.</p> <p>The main point of the appeal is the hours as it now transpires they want to have a restaurant style operation in future and have the planning consent for that till 11pm. If the licence is conditioned to prevent it being alcohol led it may not be necessary to restrict the hours.</p> <p>Negotiations have resulted in an offer of settlement which has been accepted</p>	26/27 July 2012	
Terence Benson (Slip Inn Morley)	Morley North	<p>Appeal against revocation of licence. Cllrs of the view that if there was a complete change of management (not offered on review) that the premises could be allowed to re-open with improved conditions.</p> <p>Management now changed and police feel revocation not 'necessary'</p> <p>Negotiations on conditions close to settling case</p>	20 July 2012	

<b>APPELLANT</b>	<b>WARD</b>	<b>SUMMARY OF APPEAL</b>	<b>DATE</b>	<b>OUTCOME</b>
Robert Miezi (Afrolatino Roundhay Road)	Gipton and Harehills	Appeal against refusal of variation to extend hours and activities	18 July 2012 (first Hearing)	
Longsky Leisure Ltd (D'Fusion)	City	Appeal against revocation of licence	11 and 12 Oct 2012	

### **COMPLETED CASES**

<b>APPELLANT</b>	<b>WARD</b>	<b>SUMMARY OF APPEAL</b>	<b>DATE</b>	<b>OUTCOME</b>
Bluedene Ltd (Players Bar, Albion Street)	City and Hunslet	Application to extend the trading hours for Players Ltd, the Cube, Albion Street from 2am to 3am. The premises fall within the Cumulative Impact Policy Area and are in a police hotspot area. Members refused the application due to the Cumulative Impact Policy.	10 February 2012	Appeal dismissed. Costs to LCC of £3000
McDonalds, Colton Retail Park	Temple Newsam	Application for variation of premises licence to extend hours. Licence for the restaurant until midnight and drive-through until 1am. Variation to allow restaurant and drive-through from 23:00 to 05:00, 7 days per week. Application refused on representations from residents and the Environmental Protection Team on the grounds of nuisance, noise and litter..	23 and 24 February 2012	Appeal dismissed.
Sainsburys, Street Lane	Roundhay	Application for a new premises licence for off sales between 7am and 11pm. The application was granted with conditions imposed relating to noise and litter. After discussions involving Environmental Protection and Planning, it has been agreed that the noise conditions are more appropriately dealt with by way of detailed planning conditions as a noise attenuation report has been submitted for an increase to trading hours and litter conditions amended.		Appeal settled by negotiation



<b>APPELLANT</b>	<b>WARD</b>	<b>SUMMARY OF APPEAL</b>	<b>DATE</b>	<b>OUTCOME</b>
Cocktail Bar Ltd, Call Lane	City and Hunslet	This was an application for the grant of a new licence on the busiest part of Call Lane. It was refused on the basis of the Cumulative Impact Policy. Evidence of ongoing problems obtained from WYP and Environmental Protection.	29 June 2012	Appeal dismissed. Appellant to pay costs of £2166 to LCC