

Meeting:	Licensing and General Purposes Committee
Date:	15 June 2006
Subject:	Summary of Concluded Licensing Appeals
Responsible Officer:	Director of Legal Services
Contact Officer:	David Galpin, Senior Lawyer – Litigation and Licensing, ext 7500
Portfolio Holder:	Councillor Eileen Kinnear
Key Decision:	No
Status:	Public

Section 1: Summary

Decision Required

That the Committee note the report, which contains a summary of concluded licensing appeals brought pursuant to the Licensing Act 2003, section 181 and Schedule 5.

Reason for report

To inform members as to how decisions of the Licensing Panel are being treated following appeal to the Harrow Magistrates' Court.

Benefits

Members will gain an understanding of how decisions of the Licensing Panel are being treated following appeal.

Cost of Proposals

There are no costs associated with the proposed decision.

Risks

The risk of failing to note how decisions of the Licensing Panel are being treated on appeal is that an opportunity to learn from past experience may be lost.

Implications if recommendations rejected

As for "Risks".

Section 2: Report

2.1 Brief History

- 2.1.1 Pursuant to the Licensing Act 2003, section 181 and Schedule 5, appeals may be brought against decisions of the Council as licensing authority.
- 2.1.2 In each licensing appeal, the decision appealed against is a decision of the Licensing Panel. This is not surprising, given that applications under the Licensing Act 2003 determined by the Panel are those in which there have been relevant representations. In other cases, where there are no relevant representations, the Licensing Act requires that the Council as licensing authority grant the application as sought.
- 2.1.3 The Licensing Panel is comprised of members of the Committee, who will likely be interested in how decisions of the Licensing Panel have fared on appeal.
- 2.1.4 A report was made to the meeting on 6 March 2006 reporting on six concluded appeals.
- 2.1.5 This report summarises two appeals that have been concluded since the report to the meeting of 6 March 2006 was prepared.
- 2.1.6 The report also provides supplementary information as to the costs of the appeal in relation to the Vine. This information was requested at the meeting of 6 March 2006.

2.2 Options considered

- 2.2.1 The attached Schedule contains details of the two appeals that have been concluded. In summary, the appeals have been dealt with as follows –

Royal Oak Withdrawn

Leaping Bar By consent of the parties, remitted to the Council on the basis that the Council delete additional condition 9 ('The bar serving food to be designated a no smoking

area and to allow the admittance of children accompanied by a responsible adult.’)

2.2.2 The consent for the compromise in respect of the Leaping Bar was obtained in accordance with the Council’s procedure for urgent non-executive action. Details of the information provided to members as part of that procedure are included in the Schedule.

2.2.3 The legal costs of the appeal in relation to the Vine, 154 Stanmore Hill, Stanmore, reported on at the meeting of 6 March 2006, were as follows –

Employed solicitor:	6.4 hours at £80/hour	£512.00
Employed trainee:	16.6 hours at £40/hour	£664.00
Barrister	Hearing	£881.25
Total:		£2,057.25

2.2.4 In the case of Council employees, the costs are based upon an internal charging rate used for budget purposes.

2.3 Consultation

2.3.1 There has been no external consultation in respect of this report.

2.4 Financial Implications

2.4.1 There are no financial implications within this report, it provides information only.

2.5 Legal Implications

2.5.1 No legal implications arise.

2.6 Equalities Impact

2.6.1 No equalities issues appear to arise from the disposal of the licensing appeals dealt with in the Schedule.

2.7 Section 17 Crime and Disorder Act 1998 Considerations

2.7.1 The prevention of crime and disorder is one of the four licensing objectives. The extent to which this was an issue in any appeal is indicated in the attached Schedule.

Section 3: Supporting Information/Background Documents

Supporting Information: Attached Schedule.

**SCHEDULE OF LICENSING APPEALS
LICENSING ACT 2003, SECTION 181 AND SCHEDULE 5**

PREMISES: ROYAL OAK (TO BE OPERATED AS “PAPA J’S”, 60 PEEL ROAD, WEALDSTONE

Nature of premises: Restaurant/Public house

Appellant: Thomas Gregory

Original Application: Application by Mitchells and Butlers Leisure Retail Ltd to convert an existing Justices’ Licence to a premises licence, with simultaneous variation. The applicant sought opening hours of 1000 – 0030 (Mon – Sun). The applicant sought the following licensable activities, to conclude half an hour prior to closing time: late night refreshment; and supply of alcohol. The applicant sought extended hours on a number of nominated days.

Panel hearing: 18 August 2005

Panel decision: The Panel granted the conversion and variation subject to 4 additional conditions and the following amendments: withdrawal of extra hours sought for Burns Night, St David’s Day, Halloween, all Bank Holiday Mondays, December 27th, December 28th, December 30th and Valentine’s Night; withdrawal of the request to permit licensable activities for one hour before and after ‘recognised and international sporting events’; the reduction of extended hours requested for January 1st, St Patrick’s Day, Easter Sunday, Sundays prior to bank holidays, Christmas Eve and Boxing Day from 2 hours to 1 hour.

Issue on appeal: The Appellant, a resident objector, raised a number of grounds of appeal –

1. Peel Road is a quiet residential street.
2. Prior conduct of the establishment has been poor, with under-age drinking, drug sales, drug abuse, drunken behaviour, street fighting, loud music and destruction of property.
3. An incident of youth binge drinking occurred a week after the Panel Hearing.
4. There will be increased traffic in a street which already has noise and parking problems.
5. The Panel seemed unfamiliar with the area and the police were overly optimistic about future conduct of the premises.

Magistrates' Court hearing: N/A

Decision on appeal: Appeal withdrawn 22 March 2006.

PREMISES: LEAPING BAR, CARMELITE ROAD, HARROW

Nature of premises: Public House

Appellant: Punch Taverns Plc

Original Application: Application by Punch Taverns Plc to convert an existing Justices' Licence to a premises licence, with simultaneous variation. The applicant sought extended opening hours: 1000 – 2330 (Mon – Wed), 1000 – 0030 (Thurs), 1000 – 0130 (Fri, Sat) and 1200 – 0000 (Sun), including half an hour drinking up time. The applicant sought additional hours on May, Spring and August bank holiday weekends, Easter, Christmas Eve and Boxing Day.

Panel hearing: 8 August 2005

Panel decision: The Panel granted the conversion and variation subject to a number of variations. The Panel limited the hours for sale of alcohol to the following finishing times: 2330 (Thurs); 0000 (Fri, Sat); and 2300 (Sun). The Panel granted a further hour on the Friday of each May, Spring and August bank holiday weekend, Good Friday, Boxing Day and Christmas Eve. The Panel required all other licensable activities to cease 30 minutes before closing. The Panel imposed nine additional conditions: (1) Outside patio/seating area to be cleared of patrons by 2330; (2) Regular monitoring patrol of sound leaving the premises to check noise levels at the start of an event and hourly thereafter; (3) No drinks promotions; (4) Visible and legible signs and notices to be clearly displayed asking patrons to leave quietly; (5) Doors and windows to remain closed during musical entertainment; (6) AWP machines to be emptied each night or "boot" to be fitted; (7) Fully operational CCTV during the hours the premises were open to the public; (8) DPS to join the Pubwatch scheme and regularly attend meetings; (9) The bar serving food to be designated a no smoking area and to allow the admittance of children accompanied by a responsible adult.

Issue on The appellant contended that: (1) the decision was against the

appeal: weight of the evidence; (2) the Council failed to consider, or failed to consider sufficiently, the application for variation and its respective merits; (3) the Council failed to consider, or failed to consider sufficiently, relevant and appropriate documentation and information provided by the complainant; (4) the Council placed undue weight and consideration upon the representations provided and by those making representations at the Hearing; (5) the Council failed to attach conditions to the licence commensurate with the evidence.

Magistrates' Court hearing: N/A

Decision on appeal: By consent of the parties, the Court remitted the matter to the Council with the following direction: "The Council is to issue the premises licence in accordance with the decision of the Council's Licensing Panel on 8 August 2005, save for the deletion of proposed additional condition 9." The consent for this compromise was obtained in accordance with the Council's procedure for urgent non-executive action.¹

¹ The matters put to members as part of this procedure included the following –

In arguing for deletion of additional condition 9, the Appellant refers to two matters –

- 1. The imposition of the requirement for a no smoking area is contrary to the Guidance under section 182 of the Licensing Act 2003.*
- 2. The operating schedule for the premises states that: "Unaccompanied children are not permitted on the premises and children are not permitted on the premises after 19:30 hours on Sunday through to Thursday and 20:30 hours on Friday and Saturday".*

The effect of the words in the operating schedule is that there will be a condition requiring children on the premises to be accompanied, whether the Panel's additional condition 9 is deleted or not. This means that the only real consequence of deleting additional condition 9 would be to delete the requirement for a no smoking area.

Paragraph 7.32 of the Guidance contains the following provisions –

"Licensing authorities and responsible authorities should note that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation. There will be occasions when a public safety condition could incidentally benefit health, but it should not be the purpose of the condition as this would be ultra vires the 2003 Act. Accordingly, conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene. In addition, no attempt should be made to use a licensing condition to impose a smoking ban for either health or desirability.

These are matters for other legislation and voluntary codes of practice and duplication should be avoided..." (emphasis added).

The Guidance is a mandatory consideration for the Council in carrying out its function as licensing authority and, consequently, for the Court on appeal. There does not appear to be any reason for departing from the Guidance in this case.

In these circumstances, it is highly likely that the Court would, following a hearing, delete the condition.

The Licensing Panel hearing in this case was held following relevant representations from: Louise Roberts of Council's Environment Protection Team; and Sergeant Carl Davis of the Metropolitan Police. No representations were received from the general public. Ms Roberts' representation related to noise and said nothing about a no smoking area. The representation from Sergeant Davis stated: "I ask that the non-smoking area for children is not only provided but is enforced and that the panel consider the use of smoke extractors as a condition".

Despite that original submission, Sergeant Davis has indicated, following consultation, that the Metropolitan Police agree with the appeal being compromised by the deletion of additional condition 9. The police do not consider it to be in the public interest to go to a full contested hearing in circumstances where the dispute can be resolved by deletion of this one condition – particularly in light of the Guidance.

If the appeal is not compromised, then Council will incur costs associated with preparing and arguing the appeal. This will include the time of Council's Senior Lawyer – Litigation and Licensing and Service Manager (Licensing). The Metropolitan Police will also incur costs as Sergeant Davis will be required to attend and give evidence at the hearing, which is presently fixed for a day. If the result at appeal is that additional condition 9 is deleted, as seems likely, then the Council may also be the subject of an adverse costs order in favour of the Appellant, in consequence of having rejected the proposed compromise.

In summary, it would appear to be contrary to the public interest to go to a full hearing in circumstances where –

- 1. The appeal can be resolved without full hearing by deletion of additional condition 9.*
- 2. Additional condition 9 is contrary to the Guidance and would likely be deleted by the Court in any event.*
- 3. The Metropolitan Police, who originally argued for a no smoking area, are in agreement with the proposed compromise of the appeal.*
- 4. Costs can be avoided by compromising the appeal.*