

January 2017

Thomas & Thomas E-News

A very Happy New Year to you all. There is no doubt that applications, particularly in special policy areas, are getting harder, meaning getting it right at the start is paramount.

Licensing Policy in Westminster

At the time of writing, there have been no further proposals to extend the West End Cumulative Impact Area ("CIA"). This area currently covers Soho and Covent Garden. As it stands, anything which is not a table service restaurant with no takeaway for "immediate consumption" remains contrary to policy in the CIA. This stifles casual dining and arguably has no favourable impact on the licensing objectives.

The House of Lords Select Committee and the House of Commons are currently pondering whether to make cumulative impact statutory rather than as a part of Guidance as part of a wider re-think on the licensing regime. Our submissions to the Select Committee can be found here: [HoL Submission](#).

Fabric

The dust has settled and Fabric re-opens this month. One does wonder whether that would have happened without political intervention. The closure followed an application by the Metropolitan Police under the Expedited Review procedures following the death of two customers as a result of MDMA consumption and supply of Class A drugs on the premises.

The expedited review procedure which has been much criticised requires the council to hold an initial hearing within 48 hours of the police application. On this particular occasion, that application was not resisted by the club and the club therefore closed as part of those interim suspension steps until a full review could be considered.

Under the review procedures, whilst the club can appeal against the decision, the premises will remain closed pending such appeal, which could easily take up to six months. New regulations before Parliament will in the longer term amend the legislation so that the interim steps themselves can be appealed but this will not assist operators who wish to remain open pending appeal.

Crisis Management and due diligence.

A timely reminder of what to do and what not to in our article in [Code Magazine](#)

Hackney Late-Night Levy

Hackney are consulting on the introduction of the late-night levy. The levy would apply to premises that are authorised to sell alcohol any time between midnight and 6am. The amount of the levy is calculated on the premises' rateable value. There may be a 30% reduction for those who join a suitable 'best practice' scheme. In addition,

Premises only permitted to trade between midnight and 6am will also be caught. Operators will be given the opportunity to vary their licence free of charge to reduce their hours and therefore avoid the levy. However, once those hours are reduced there is no guarantee of successfully reinstating in the future.

As it stands, no council has implanted an Early Morning Restriction Order ('EMRO') so expect even more legislation to encourage this.

Westminster Lose A1/A3 Planning Appeal

Leon at 275 Regent Street) was recently served a planning enforcement notice by Westminster alleging a change of use from use Class A1 (retail) to mixed use comprising a retail shop, restaurant/café and hot food takeaway, and for the placing of tables and chairs on the highway without the requisite planning permission. The enforcement notice was successfully appealed by the operator.

Although the Planning Inspector agreed that a material change of use had occurred, she acknowledged that: there was evidence of retail use; a notable amount of cold food was taken away for consumption off the premises; the public were clearly attracted to the premises; and the premises had operated since 2007 without any complaints from neighbouring residents. In doing so the Inspector allowed the appeal by granting the mixed-use consent.

This is a significant appeal decision. Westminster will generally refuse applications that result in the loss of A1 retail. The Inspector places emphasis on the fact that the use is part and parcel of the character and function of the street and that as long as there is an element of retail sales the use is not contrary to Westminster's stated policy.

What we've been up to:

- Keeping Blandford Street alive with the licensing of Clarette and on a similarly French theme, Xavier Rousset's Comtoir.
- On behalf of Underbelly, a Spiegeltent in Leicester Square Gardens and the world famous La Soiree.
- The new Sushi Samba in Covent Garden Piazza.
- In St James's Market, Veneta for Simon Mullins's Saltyard Group and Duck & Waffle.
- Defending an application to review the licence at Del Aziz in Clapham.
- Varying Harvey Nichols' premises licence following a significant renovation of the Knightsbridge store.
- Licensing the new and exquisite upper floors of Robin Birley's private members' club at 5 Hertford Street.
- Obtaining a new premises licence for Burger & Lobster's new restaurant in Leicester Square.
- In Albermarle Street, Isabel by Juan Santa Cruz
- On behalf of Samba Brands, their new restaurant and deli at Centrepont
- For Shake Shack in respect of their successful application for a new alcohol and 3am late night refreshment licence in Leicester Square.
- Experimental Cocktail's new hotel in Henrietta Street and a private member's club in Chesterfield Street.
- Acting for Ralph Lauren in respect of the new retail store on Regent Street.
- Sophisticats' new club on Brewer Street.

New Starters

We would like to welcome and announce two new arrivals to our team:

- **Liz Coley**, an experienced solicitor with a breadth of experience in licensing and related commercial matters, having been in-house at a major pubco and most recently in-house counsel at Nimax Theatres.
- **Danielle Zaire**, a planning consultant, with a huge portfolio of mixed use planning consents under her belt. Danielle can advise on change of use, signage, highways, extract and enforcement.

And from all at Thomas and Thomas, may we wish you a very prosperous and safe Happy New Year!

If you have any queries in respect of the above or any other matter, please contact one of the partners

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