

Thomas & Thomas E News

Shadow Licences

As a reminder, a premises licence can lapse on its surrender or the insolvency of the licence holder. This can be a problem for landlords and tenants alike.

An interesting safeguard for landlords and tenants is to apply for a 'shadow licence'. A shadow licence is a second licence for a premises, usually granted on the same terms as a premises' existing licence. It is useful in case the existing licence is at risk of lapsing, being reviewed or if a tenant refuses a transfer at the end of a lease. For tenants, it can be an equally useful tool in partnership disputes.

The divisional court in the case of *Extreme Oyster and another v Guildford Borough Council* confirmed that a landlord had the right to apply for and hold a shadow licence. Westminster City Council have now granted several shadow licences to our clients who are keen to protect their position.

City of London adopt Late Night Levy

The City of London's Levy will come into effect on the 1 October 2014. The Levy will apply to all premises licences authorising the sale of alcohol after midnight until 6am. The Levy is charged whether or not the premises actually trades after midnight. There are no exemptions, not even for New Year's Eve.

The amount of the fee will depend on the premises' rateable value. This is expected to be anywhere between £300 and £4,440 per annum. Operators who have achieved the City's "Safety Thirst" award will be entitled to a 30% discount. Alternatively, if you want to avoid the Levy altogether, you can apply to reduce the permitted hours for alcohol to before midnight free of charge.

Minimum Pricing

The Government, in its infinite wisdom, has passed even more regulation to restrict the minimum price that alcohol can be sold. For on-licensed premises, it's just another confusing part of the mandatory conditions, which even Aristotle might have some difficulty understanding - the formula that is being applied being " $P = D + (D \times V)$ "! Astonishingly, due to the legislation's definition of cider, it seems cheap price white cider such as 'Frosty Jacks' or 'White Lightening' is not caught by the condition!

Notwithstanding the maths and definitions, we hope that local authorities will enforce this otherwise meaningless mandatory condition upon off-licences or others who sell under-price alcohol. These type of operators undermine the licensing objectives and unfairly impact upon bar and restaurants, who sell without discounting but otherwise suffer the effects of the off-licence trade.

Mandatory Conditions

Further changes to the mandatory licensing conditions will come into effect from 1 October 2014. The changes include amendments to the mandatory conditions relating to age verification policies

and drinks measures. So far as we are aware, neither of these requirements have been enforced against by any local authority since they came into force in 2010. The changes are:

- Age Verification Policies must be 'adopted' as opposed to 'applied'. The change will require DPS's to be more active in implementing Challenge 21/25.
- If a customer does not specify their desired measurement of beer, spirit or wine, they must be made aware of the availability of half pint measures, single measures of 25ml or 35ml and a 125ml glass of wine.
- The availability of smaller measures also has to be presented in a 'menu, price list or other printed material which is available to customers on the premises'. This will likely mean many operators have to re-print drinks menus and wine lists in order to comply.

Entertainment De-Regulation

A new Order proposing to further de-regulate entertainment from the Licensing Act 2003 has been laid before Parliament. The welcomed proposals include:

- **Cross-Activity Exemption**- exempt regulated entertainment between the hours of 8am to 11pm provided by or on behalf of local authorities, health care providers or schools on their own premises.
- **Live Music in Relevant Alcohol Licensed Premises and Workplaces**- the exempt audience limit for live amplified music in alcohol licensed premises or workplaces will be raised from 200 to 500 people, between the times of 8pm to 11pm.
- **Recorded Music in Relevant Alcohol Licensed Premises** - for audiences of up to 500 between the hours of 8am to 11pm, the playing of recorded music in alcohol licensed premises will be deregulated.
- **Live and Recorded Music Exemptions**- local authorities, health care providers and schools that make their premises available to third parties for live and recorded music between 8am to 11pm for audiences of up to 500 will not require a licence.
- **Travelling Circuses, Greco-Roman and Freestyle Wrestling and Incidental Films** - all receive similar relaxations too.

Police Enforcement

We have noticed a steady increase in enforcement action, particularly by the police. After an incident occurs at or near a licensed premises, the police will sometimes ask the licence holder to add additional conditions to their licence. These conditions are sometimes perfectly reasonable and may allow the Licensee to avoid an unnecessary review of the licence.

In some other instances, disproportionate conditions have been demanded. A difficult balancing act must then be taken by the Licensee to decide whether refusing to agree conditions is worth the risk of further enforcement action. This is another example where a shadow licence can be of particular use for landlords should a tenant prejudice their licence.

We have recently acted in a case where a review was invalidated on the day of the hearing as the local authority failed to deal with the statutory requirements as to service and advertising.

Westminster Statement of Licensing Policy

The new elected Licensing Committee, now chaired by St James's member Cllr Tim Mitchell, are thought to be consulting on a review of the licensing policy later this year, with a view to that policy taking effect early 2015. We will keep you updated but with the West End Commission reporting and Crossrail developing, an eye should be kept on both likely restrictions and potential de-regulation.

Notting Hill Carnival

The Carnival weekend is scheduled for 24-15 August 2014. We are aware that some local authorities are asking licensed premises within the Carnival footprint to:

1. Not allow new customers to enter their premises between 7pm and 9pm; and
2. Cease alcohol sales for consumption off the premises between 7pm and 9pm.

At this stage the requests do not constitute a legal requirement however the local authorities are asking for operators to cooperate.

What we have been doing:

- Obtaining a premises licence and planning permission for [Roka](#), opening in Aldwych at the end of this year. After significant pre-application discussions with the responsible authorities, a licence was granted for the premises to trade until 2.00 am and a subsequent variation of the planning permission was also granted, allowing the same hours and also a bar as an exception to the council's TACE 10 policy.
- Advising Argent in their spectacular [King's Cross development](#). Site wide provisional statements were obtained which are now being followed by individual premises licence applications submitted by the respective tenants.
- Licensing special events on Shaftesbury PLC's estates in the West End, including [World Record Store Day in Soho](#) and [Seven Dials Shopping Day](#). Also the licensing of Kingly Court.
- Obtaining a new premises licence for the [Punchbowl](#) in Mayfair.
- Licensing [Smith & Wollensky's](#) new European flagship steak house, even though the application received numerous residential objections.

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

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