

May 2013

## Thomas & Thomas E News

### Planning Reform for Pop-up Restaurants

From 30 May 2013, any building which currently falls within Class A1-5, B1, D1 or D2 can change, without an application, to a use falling within Class A3 for a single continuous period of up to two years. These temporary powers will allow useful changes, which in several cases Westminster would likely not permit, most prominently the change to restaurant/café use.

There are of course some restrictions. The change will only benefit from these new rights when the floor space subject to the change is under 150 sq/m; the property has not previously benefitted from temporary permission; and the building is not listed.

Where a change is sought you would need to notify your local planning authority of the date that it would take place and what the proposed use would be. Once the temporary use expires the site will revert back to its previous use.

Whilst the planning rules may be relaxed, please remember you may still need a Premises Licence for the temporary use. T and T have obtained many such licences, particularly in the Covent Garden and Soho area.

### West End Commission Report

Proposals for the future success of the West End have recently been published by the West End Commission. The recommendations include:

- 1. All night tubes** – TfL are already examining the possibility of a one hour extension at weekends. Whilst the proposals are welcome, one can't help think that we've heard it all before. If there is any extension, it's not likely to be anytime soon.
- 2. Late Night Levy** – an invitation to lobby central Government to change the newly adopted Late Night Levy regime. The Commission argue the Levy should target specific problem areas/premises. This is a preferable alternative to the existing Borough wide application of the Levy, which is capable of catching all premises operating anytime between midnight and 6am.
- 3. Coordination of Licensing Policies** – between the Central London Boroughs to ensure consistency with neighbouring policies. In particular, the Commission suggest a clearer distinction between the 'evening activities' (up to 1am) and 'night time activities' (after 1am). We expect Westminster, Camden and RBKC to review their policies next year. Although resistance is expected, the Commission's findings on pre and post 1am premises may help justify relaxation to Westminster's Policy 'Core Hours' and Camden's 'Framework Hours' but are likely to have an adverse impact on use after these hours.

### R (Hemming) and Others –v- Westminster City Council, Court of Appeal, 24 May 2013

A group of sex shop owners have won an appeal to reduce the licence fees they pay for sex shops. The City Council had historically charged in the region of £29,000 for an annual sex shop

licence. The court found that the Council charged a disproportionate and unlawful amount for the annual fee and could not recover the cost of enforcing non-licensed premises.

The judgment (which may or may not be taken to Europe by Westminster) is that it could have an impact on where the Council recovers their fees in other cases. It is probably not so significant as regards annual premises licence fees as they tend to be modest in amount. However, the annual fees for Sex Establishment licences may need to be justified and certainly, tables and chairs licences is something which Thomas & Thomas believe could be the subject of scrutiny.

### **Justifying Late Temporary Event Notices**

Changes to the Licensing Act in 2012 allow operators to submit a limited number of 'Late TENS'. A quick recap:

- Ordinary TENS have to be submitted no less than 10 working days before the event.
- Late TENS can be submitted no later than 5 working days before the event.
- Personal Licence holders can apply for up to 10 late TENS per year, non Personal Licence holders can apply for up to 2 late TENS per year (inclusive of other TEN limits).

Some local authorities have been relying on old Government Guidance that suggested Late TENS would only be given in 'exceptional circumstances'. This caused difficulties for operators taking late event bookings – particularly as a Late TEN refusal cannot be appealed. However, the requirement for exceptional circumstances is not in the Act and has now been removed from the Guidance.

### **Further De-Regulation of Entertainment**

Live Music was de-regularised last year by the Live Music Act 2012 (see our July 2012 E News for more details: Live Music Act). The trend is set to continue with further proposed de-regulation of plays and dance performances before an audience of up to 500 people between 8 am and 11 pm. Similar proposals have been made for indoor sporting events, although not boxing and wrestling. Please watch this space in our future E News to see if the proposals will be implemented.

### **And finally...Restaurant TV Show**

If you're planning to open a new restaurant this summer and want some free expert guidance and TV publicity please get in touch – Twenty Twenty TV are producing a new TV show filming new restaurant start ups.

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

#### **Alun Thomas**

E: athomas@tandtp.com

T: 07956 805464

#### **Thomas O'Maoileoin**

E: tomaoileoin@tandtp.com

T: 07786 966173