

## **A step by step guide to the licensing process for ‘sexual entertainment venues’ for residents**

Lap dancing and similar types of premises were, until recently, licensed under Licensing Act 2003. Some felt that this constrained the ability of licensing authorities to deal with the concerns of the local community about these types of venues.

Sex shops were, by contrast, licensed under a regime which provided a much more flexible framework, Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A). The Policing and Crime Act 2009 amended LG(MP)A to reclassify premises providing lap dancing and similar as ‘sexual entertainment venues’ which required licensing under the provisions of LG(MP)A where that legislation was adopted (although of course the vast majority if not all would still require a licence under Licensing Act 2003 to sell alcohol).

Below is a handy quick reference guide for residents of Westminster to the rights (and responsibilities) of residents under the LG(MP)A regime. Westminster City Council has adopted the relevant provisions of LG(MP)A.

Please note that this guide is necessarily general in nature, and accurate in law as at October 2013. Please also note that some of the information may be specific to practice/procedure in Westminster and may not be applicable in other licensing authority areas.

The Licensing Advice Project (LAP) can provide case-specific advice, information and representation to residents of Westminster.

Please feel free to [contact us](#) if you have any queries at any stage of the process.

### **1. I have become aware of a licensing application for a ‘sexual entertainment venue’.**

- You have the right to object to the application. It is a good idea to find out more information first. If you have received a letter from the City Council, it should contain brief details of the application. You may also have seen a notice at the premises. Both should inform you of your right to make an objection.
- Note that although Applicants are required to advertise the application themselves for new applications and renewals, they are not required to do so for variations.
- If you wish to find out more about an application, the City Council has a fully searchable Public Licensing Register containing details of applications and licences. It can be accessed [online](#).
- You can sign up for notifications and to track the progress of individual applications. If you are not able to access the internet, you can telephone the Council on 020 7641 8549, or you can contact us and we can do it for you.

There are basically three types of application which residents can object to: new licences, renewals and variations. For the first and third of these, there may well also be a Licensing Act 2003 application made at the same time.

## **2. I would like to object to the application. What should I do?**

- It will be necessary to look closely at the application and plans. It can also be useful to look on the Register for previous applications and the current licence (if any).
- There are various requirements which need to be complied with (including a time limit). However, in general there is more scope for residents to bring wider issues into play than there is when making a [representation](#) on a Licensing Act 2003 application. This is because the scheme of LG(MP)A recognises that potential areas of concern are not limited to those arising directly from the 'relevant entertainment'.
- There are mandatory and discretionary grounds for refusal. Although the Act does not constrain the content of objections, it obviously makes sense to frame an objection to address the grounds of refusal
- Grounds on which objection can be made include that the number of existing licences is equal to or exceeds the number which the authority has determined is appropriate for that locality, and that the grant or renewal would be inappropriate, having regard to the character of the relevant locality; the use to which any premises in the vicinity is put; or to the layout, character or condition of the premises.
- Recent [case law](#) in the higher courts has confirmed the broad discretion which the Council has when determining these applications.

The Council is required by law to send only a summary of your objection to the Applicant or their representative. In contrast to Licensing Act 2003 and Gambling Act 2005 applications, they cannot reveal your identity without your consent.

Certain parts of the Council's '[Statement of Licensing Policy for Sexual Entertainment Venues](#)' may assist in assuring that your objection is as effective as possible.

## **3. I have my objection. Where do I send it?**

- An objection can be made in the following ways:
  - via email: [generallicensing@westminster.gov.uk](mailto:generallicensing@westminster.gov.uk)
  - via [Public Access](#) on the Council's website
  - by post to Licensing Applications, Westminster City Council, 4<sup>th</sup> Floor South, 64 Victoria Street, SW1E 6QP
  - by fax to 020 7641 3238

- An objector shall give notice in writing of the objection, stating in general terms the nature of the objection, not later than 28 days of the date of the application.

We would advise submitting an objection either by email or via Public Access, as receipt is almost instantaneous and you will receive an acknowledgment.

#### **4. The Applicant's solicitors have contacted me. What do I do?**

- If you have waived your right to anonymity, the Applicant's representatives may suggest a meeting in order to discuss your concerns and examine ways in which they can be resolved. If you are not able or willing to meet, it is still a good idea to respond to the invitation saying so.
- Sometimes the Applicant's representatives may propose amending the application to e.g. reduce the hours sought, or to make the licence subject to conditions which may address your concerns. We are happy to advise you on these issues.

#### **5. I have received a letter from the Council notifying me that a hearing will be held to determine the application.**

- LG(MP)A does not actually contain an express right for objectors to speak at a hearing, but it should in practice be permitted. It may be considered, as it is in Westminster, that hearing all relevant parties is an effective means of assessing the application in the appropriate way.
- LG(MP)A leaves it to the licensing authority to determine its procedure. A copy of the procedure should be available from the authority on request, but in any event the procedure should be made available with the notice of hearing.
- You will be asked to confirm whether you wish to attend the hearing, whether you will be represented, whether you wish anyone else to speak on your behalf (e.g. a witness who is also concerned about the application but has not made a representation), and whether you consider a hearing to be necessary.
- You should respond at least 5 working days before the hearing.
- If you want to submit any further evidence in support of your objection, you should do it by the latest on the Wednesday in the week before the hearing to ensure that it will be included in the Report to Sub-Committee (see below).

#### **6. I have told the Council that I want to attend the hearing, and they have sent me a bundle of papers.**

- This will be the Report to Sub-Committee, containing the relevant documents which will be before the Sub-Committee at the hearing.
- It will also contain the 'standard conditions' which the authority has determined will apply to all licences (unless as part of the application the Applicant has applied to amend/delete any).
- The Sub-Committee may take into account further evidence produced up until the day before the hearing (or on the day of the hearing with the consent of the parties) but in the interests of fairness any further evidence should be

submitted as soon as possible, to allow the parties (and the Sub-Committee) sufficient time to consider it prior to the hearing.

### **7. Do I need to be represented at the hearing?**

- If you decide to attend the hearing, you should be permitted to address the Sub-Committee. In doing so, you can expand on your objection, but should not introduce entirely new matters.
- The procedure of the hearings broadly follows that for Licensing Act 2003 hearings (see separate Guide).
- Each party is permitted an equal amount of time to speak. However, where there are numerous residents who will each be making the same points, it is advisable that one or two people are appointed as spokespersons.

### **8. What format do hearings take?**

- Hearings are designed to be accessible and fair to residents and those who are not legally qualified, and should take the form of a discussion led by the Sub-Committee. It is not a court of law, although there are obviously procedural requirements.
- Matters can change quickly during a hearing. If in doubt as to what is happening, ask for clarification.

### **9. How will I know what has been decided?**

- The decision of the Sub-Committee is announced either immediately following the hearing or sent to the parties within 5 working days.
- You should subsequently be sent the formal written decision, with reasons.

### **10. The application was granted, and I am not happy with the decision. Can I appeal?**

- There is no right of appeal for objectors. The only way of challenging a decision would be by way of judicial review, which can be a costly and lengthy process. It is therefore very important to take legal advice before embarking on this path.
- Although there is no right for residents to 'review' a licence as there is under Licensing Act 2003, SEV licence holders must apply to renew their licences on an annual basis. Residents have the right to object to these applications, and introduce any new evidence. For example, although the authority may have previously determined that the nature of the locality is such that a grant would not be inappropriate, this does not fetter their discretion on subsequent renewal applications, and recent [case law](#) has confirmed that this can, in the circumstances of that case, be an appropriate course of action.

### **11. The application was turned down, can the Applicant appeal?**

- It depends on what grounds the Application was refused. On some grounds, there is no right of appeal to the Magistrates' Court, although the Applicant could apply for a judicial review of the decision.
- On other grounds, there may be a right of appeal to the Magistrates' Court and then to the Crown Court.
- The appeal is against the Council's decision, not against the objectors. The Council is very experienced at handling appeals and will contact you in due course regarding arrangements for the Court hearing.

## **12. I would like to keep up to date with what is happening in my area with licence applications.**

The Council produces a weekly bulletin each Friday called 'Licensing News', which details all LG(MP)A applications pending in the consultation period i.e. those applications for which representations can still be accepted. You can ask to be put on the mailing list by emailing [premiseslicensing@westminster.gov.uk](mailto:premiseslicensing@westminster.gov.uk)

Licensing News also contains a summary of the outcome of the hearings held that week, details of Licensing Act 2003 applications, Temporary Event Notice (TEN) applications made that week, and details of Gambling Act 2005 applications (e.g. for betting shops) which are in the consultation period.

Additionally, [Public Access](#) on the Council's website enables you to receive email alerts on properties or streets you are interested in. You will need to register. There is a useful [document](#) on the Council's website to guide you through the process, or you can email the Council on [premiseslicensing@westminster.gov.uk](mailto:premiseslicensing@westminster.gov.uk) if you are having difficulties. You can also contact us for help if you wish.

Once you have registered, you can also track an application on which you have made a representation, and you will be updated when the status of the application changes.

Feel free to contact us if you have any queries about these type of premises.

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