

THE COMMON COUNCIL OF THE CITY OF LONDON  
LICENSING SUB-COMMITTEE

Alderman Simon WALSH JP (Chairman)  
Dr Peter Hardwick QHP CC  
Edward Lord OBE JP CC (Licensing Committee Chairman)

Tuesday 25 October 2011 (10.00 – 11.30)

IN RE:

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THE BATHHOUSE  
(7-8 Bishopsgate Churchyard EC2)

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*At today's hearing the sub-committee was addressed by James Anderson of Popplestone Allen on behalf of the applicant and by John Hall and Paul Holmes (licensing officers) on behalf of the Commissioner of Police of the City of London.*

*Save for a copy of the consent to become DPS, no documents were submitted to the sub-committee beyond those contained in the bundle prepared by the Town Clerk for the hearing*

- 1) On Friday 9 September 2011 David Wilcox made 2 applications under the Licensing Act 2003. These applications were received by the City Corporation on Monday 12 September 2011. The first application was to transfer the existing premises licence for The Bathhouse from its then current licensee (Cocktails & Dreamers Limited) to himself. The second application was to vary the licence to change the DPS of The Bathhouse to a Victoria Mancini. At the hearing this second application was withdrawn and we need say no more about it.
- 2) Once granted, a premises licence is a significant asset. It materially enhances the value of premises to which it relates to the benefit of the licence holder and its acquisition by another often represents a substantial investment by them. This is possibly truer in the City of London than in many other parts of the country. Indeed a premises licence is recognised as a 'human right' and firmly protected, as such, by domestic and European legislation<sup>1</sup>
- 3) Applications to transfer premises licences are governed by sections 42-46 of the Licensing Act, 2003. The principles and criteria applied by these sections are rather different to those applied in other parts of the Act to, for example, applications for new licenses or applications for reviews of licences: they are however not difficult to understand. There is no requirement to advertise an application to transfer. This is because only a chief officer of police can object - and then only on very limited grounds:

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<sup>1</sup> Tre Traktörer Aktiebolag v Sweden (1989) 13 EHRR 309

- i) §42(6) Where a chief officer of police ... is satisfied that the **exceptional**<sup>2</sup> circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice **stating the reasons why he is so satisfied**.
- 4) The Guidance issued by the Secretary of State under s182 of the Act<sup>3</sup> explores this requirement further:
  - i) ¶8.110 ... Such objections are expected to be **rare** ...
  - ii) ¶8.111 It is stressed that such objections ... should only arise in **truly exceptional** circumstances ...
- 5) On 20 September 2011 the City Police wrote to the City Corporation in, so far as is material, the following terms:
  - i) "... please accept this letter as notice that Police, as a responsible authority, object to the transfer as it is our belief that if granted it would undermine the Licensing Objectives of the prevention of crime & disorder and the protection of children from harm."
- 6) It is clear to us that this was intended to be the s42(6) Notice and indeed it was accepted as such by the City Corporation who then took steps to arrange today's hearing. Yet as a s42(6) Notice it is woefully inadequate. It fails completely to address the question of there being 'exceptional circumstances', it provides no reasons and, more worryingly still, it purports to address the child protection objective which shows that its draftsman took no account of the significant and important limitations of s42(6) at all.
- 7) At the hearing, those representing the City Police tried valiantly to suggest that the Notice also comprised the collection of documents appearing at pages 51 *et seq* of our bundle. Setting aside the issue as to whether these documents were delivered in time to satisfy s42(7) (which our officers have reason to doubt), we are not impressed by these documents as they do little more than mention the word 'exceptional' (p54) and make the same fundamental error as in the Notice by overtly addressing, again quite impermissibly, the child protection objective. Bearing in mind our clear duty of fairness to the applicant, there is no way for anyone to work out which parts of the evidence are meant to deal with which licensing objective so that even a generous wielding of the blue pencil would not assist.
- 8) We are therefore forced to conclude that s42 of the Act was never properly engaged, that this hearing should not have taken place under s44 and that the applicant is fully entitled to the transfer of the premises licence into his name. The Comptroller & City Solicitor agreed with our view and we would only say that it is a great shame that no one spotted any of these fundamental problems earlier.

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<sup>2</sup> the emphasis in quoted passages is ours

<sup>3</sup> amended version dated October 2010

9) Having not proceeded to a full hearing we must be wary of making definitive statements as to the substantive merits of the case. However, lest the Commissioner feel that a meritorious objection has been foiled by nothing more than a mere lawyers' technicality, we would make the following observations on the evidence in the bundle which we read carefully in advance:

- i) we were far from sure that a catalogue of events relating to the operation in 2009-2010 of premises known as Vogue, a night club in Blackpool/St Annes (an area well known to 2 of the sub-committee members), was of any particular relevance to the proposed operation of a wholly different set of premises in the City of London where (with no disrespect to the good citizens of, and visitors to, Blackpool) the clientele is likely to be rather different;
- ii) we could not see how, in the absence of officers from Lancashire, any of the allegations in respect of Vogue nightclub could be proved against any substantial challenge, even on the balance of probabilities;
- iii) we were fortified in our initial views as to the tenuous relevance of the Blackpool allegations when we discovered that the David Wilcox who was making the application in front of us was not the same David Wilcox who had some vague connection with Vogue – but was his son;
- iv) we noted that the only sanction our colleagues on Fylde Borough Council saw fit to impose at their review hearing in respect of Vogue was a very short suspension of the licence to allow equipment to be fitted and staff to be further trained.

10) If we are proved wrong in our preliminary views on the merits of the evidence and The Bathhouse is mismanaged by the applicant, any responsible authority, member of the Common Council or business or resident in the vicinity is entitled to apply for a review of the licence which may result, amongst other things, in a variation of the opening hours or conditions, the removal of a licensable activity or the complete revocation of the licence.

11) If the chief officer of police is dissatisfied with this decision he is reminded of his right to appeal to a Magistrates' Court.

12) Sadly, perhaps, we must now return to ¶8.111 of the Secretary of State's Guidance under s182 of the Act. After the part of the paragraph quoted above, this continues:

- i) If the licensing authority believes that the police are using this mechanism to vet transfer applicants routinely and to seek hearings as a fishing expedition to inquire into applicants' backgrounds, **it is expected that it would raise the matter immediately with the chief officer of police.**

13) It is not normally possible to know exactly what motivates the police when they take a certain course of action and we would not want ever to make insinuations that were not supported by evidence. However, in this case two particular matters concerned us. The first was that we were told that the whole question of the Vogue nightclub only arose when a 'background check' was done on the address given by the person it was proposed to make DPS in the application that was, in the event, withdrawn. In itself, this is probably unobjectionable.

14)The second matter of concern was the partly unredacted email traffic that appeared in 'Exhibit B' to the police evidence (pp 93-94 of the bundle). In there we read the following passages:

- i) [from Paul Holmes to Lancashire Police] 'Hello. As you are probably aware I spoke with one of your colleagues yesterday who was able to paint a picture of the premises and the above named people as people we would probably not want to have a premises in our force area which has a Licence until 3am Mon/Wed, 5am Thurs/Fri and 6am on Sunday'
- ii) [from Paul Holmes to Lancashire Police] 'Is there any way I can get more information about their involvement in those other premises to support our case that we consider them not to be suitable persons'

15)Mr Holmes told us that he was not here trying to decide if the applicant was the type of person who was welcome to be a licensee in the City but we cannot really see that these words, given their ordinary English meaning, point in any other direction. This does seem to us at the very least to raise questions about the existence of 'routine vetting' and the very real fear that our hearing was to be no more than a fishing exercise to inquire into the applicant's (and the applicant's father's) background and connections

16)In these circumstances we feel we must comply with the Secretary of State's expectations of us and we will refer this matter at once to Mr Commissioner for him to consider wholly independently.