

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

Alderman Simon WALSH JP (Chairman)
Deputy John BARKER OBE
Ms Marianne FREDERICKS CC

Tuesday 5th April 2011 (10.00-12.45)

IN RE:

MONTCALM HOTEL (LONDON) LIMITED
[MONTCALM HOTEL,
42-46 & 52 CHISWELL STREET]

On 10 February 2011 Montcalm Hotel (London) Limited made an application for a new premises licence in respect of premises at 42-46 & 52 Chiswell Street which is being refurbished and is expected to operate as a 5-star hotel with some 200+ bedrooms.

This application was advertised in the usual way and representations were received from the City of London police, 1 local residents' group and some 14 or 16 individual local residents.

The sub-committee met today and heard from Mr Stephen Thomas (a solicitor advocate from Stephen Thomas Law) and Mr John O'Neill on behalf of the Applicant. No-one attended from the City Police as the Applicant had agreed to the imposition of a 'promoted events' condition in the form usually acceptable to the licensing authority. We had been made aware of this agreement in advance.

We heard in person from Karl Clowry, Roger Pavitt, Roger Fowler, Nicholas Vergottis, John Tomlinson CC (on behalf of the Cromwell Tower house group) and Chris Punter CC (on behalf of the Ben Jonson house group). We also took into account the written representations from other local residents that appeared in the papers for the hearing.

We also took into account our duty to promote the licensing objectives as set out in section 4 of the Licensing Act, 2003, the statutory guidance issued by the Secretary of State under s182 of the Act and the City Corporation's own Licensing Policy dated January 2011.

Preliminary Issues

This application raised a number of unusual preliminary issues. The first was whether we had any jurisdiction to licence the premises at 42-46 Chiswell Street. This is a stand-alone building which will house only bedrooms on the opposite side of Chiswell Street from the main hotel building with the reception facilities and public rooms at 52 Chiswell Street. There is no physical connection between 42-46 Chiswell Street and 52 Chiswell Street at street level, nor by overhead bridge or walkway nor by underground tunnel. This is a real jurisdictional problem as the boundary between the City of London and the London Borough of Islington runs down the middle of Chiswell Street between the proposed hotel's two buildings.

We were told that LB Islington had agreed to the Common Council having jurisdiction to deal with the licence application but we were also told that the Commissioner of Police of the Metropolis, being the responsible authority for 42-46 Chiswell Street, had not been served with notice of the application. Having considered the issue and principally because there is no physical connection at all between the hotel's two buildings we could not find them to be one set of premises to which section 12 of the Act could apply and accordingly we declined to deal with 42-46 Chiswell Street at all. If we are wrong in this decision we can say for the assistance of any body on appeal or review that we would have had no difficulty in granting a licence for 42-46 Chiswell Street had we felt we had jurisdiction.

The next preliminary issue was whether the showing of 'pay-per-view' films on the television sets in hotel bedrooms constituted an 'exhibition of a film' (*cf* Schedule 1 paragraph 2(1)(b) of the Act) 'to any extent for members of the public or a section of the public' (*cf* Schedule 1 paragraph 1(2)(a) of the Act). We concluded that a hotel bedroom, let by contract to a specific guest or guests, was not a place to which members of the public had a **right** to go and that it was therefore not a place covered in this regard by the Act. We therefore declined to grant a licence for showing such films. This, we believe, is consistent with other sub-committee decisions in respect of other hotels in the City. If we are wrong in this decision we can say for the assistance of any body on appeal or review that we would have had no difficulty in granting a licence for this purpose had we felt hotel bedrooms were covered by the Act in this respect.

The final preliminary issue was whether hotel bedrooms need to be individually licensed for the sale of alcohol from minibars. There appear to be two schools of thought on this issue but in our view the definition of the location of sales in s190 of the Act¹ was apt to cover minibar sales (at least from some designs of minibar). This is perhaps unfortunate as it will mean that the Applicant must apply to LB Islington for a licence in respect of minibar bedroom sales at 42-46 Chiswell Street.

¹ namely that when the place where a contract for the sale of alcohol is made is different to the place where the alcohol is appropriated to the contract, then it is the latter place that needs to be licensed

If it helps, however, we can say that had we had jurisdiction, we would again have had no difficulty in granting such a licence.

The substantive Application

The Applicant was questioned at length by the sub-committee and also by those making representations about the general nature of its proposed operation of the hotel and about the specific arrangements for the delivery of goods and the collection of refuse. To summarise matters, we were impressed by the very helpful, cogent and informative responses of Mr Thomas and were left with no doubt but that it was the Applicant's *bona fide* intention to run these premises as a high-class hotel concentrating on services to restaurant customers (both pre- and post- theatre) and to overnight guests rather than to the 'function trade'.

Most issues of potential crime and disorder were adequately dealt with by the condition proposed by the City Police in respect of promoted events. However, issues of noise and public nuisance were clearly of great concern to local residents in respect of deliveries and collections, external drinking and smoking and the possibility that these premises, if open later than other surrounding licensed premises, would become a magnet for those who would be excessively noisy.

Having listened very carefully to all that was said to us today and having read the comments of those unable to be present, we have formed the view that this proposed hotel is likely to be a great asset to the area but nevertheless we still feel that there is a sufficient likelihood of public nuisance being caused by heavy patronage in the late evening and then on into early hours that we are prepared to grant a licence only in the following terms (Part A) and with the following conditions (those in Part B being drawn from the operating schedule and those in Part C being conditions we find necessary and proportionate to attach to the licence following the hearing to deal with the concerns raised):

Part A

- Supply of alcohol: all day², every day
- Recorded music: 11.00 to 02.00 the following day, every day
- Live music: 11.00 to 02.00 the following day, every day
- Provision of facilities for making music and for dancing: 11.00 to 02.00 the following day, every day
- Late night refreshment: 23.00 to 05.00 every day

Part B

- No promoted events are to be held on the premises, such events being defined as those involving music and/or dancing and where

² but note the limiting conditions in Part B

the musical entertainment is provided at any time between 23.00 and 07.00 by a disc jockey or disc jockeys, one or some of whom are not employees of the premises licence holder (or, where different, the permanent premises operator) and the event is promoted to the general public

- The premises licence holder shall install and maintain a comprehensive digital colour CCTV system as per the minimum requirements of the City Police Crime Prevention Officer. All entry and exit points shall be covered enabling frontal identification of every person entering in any light conditions. The CCTV system shall continue to record whilst the premises are open for licensable activities and at all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon request to a constable or authorised officer of the Common Council at any time during the said 31 day period and to this end a staff member who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public in order to show any constable or authorised officer such recordings with the minimum delay
- Save for alcohol supplied to *bona fide* guests by way of minibars in their rooms or by way of room service from a hotel staff member directly to a *bona fide* guest in his or her room, there is to be no supply of alcohol to any person under this licence between 02.00 and 08.00 on any day
- Save for alcohol intended to be consumed in the Courtyard or by *bona fide* hotel guests in their rooms, no supply of alcohol for consumption off the premises shall be permitted after 21.00
- Recorded music, live music, and facilities for making music and dancing are to be provided in the Function Room in the East basement only;
- Clearly legible notices shall be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and surrounding area quietly
- A direct telephone number for the duty management of the premises shall be publicly available at all times the premises are open

Part C

- No use shall be made of the 'beer-drop' in Silk Street before 08.00 Mondays to Fridays or before 09.00 on Saturdays, Sundays and Bank Holidays
- No new customers (save *bona fide* guests staying overnight in the hotel) shall be admitted to the Hotel Bar (being that part of the premises on the ground floor at the junction of Silk Street and Chiswell Street) after 24.00 on any night

The licence will also be subject to all mandatory conditions required by the Licensing Act 2003, as amended and by the Licensing Act 2003 (Mandatory Licensing Conditions) Order, 2010.

Overriding Condition

We were concerned during the hearing at the quality and legibility of the plans that had been provided with. Therefore we find it necessary to make a further condition that no licensable activities are to take place under this licence until the Applicant has provided a set of plans that comply fully with Reg 23 of the Licensing Act 2003 (Premises Licences etc) Regulations, 2005 and which clearly mark the location of the Function Room and the Hotel Bar and the location and extent of the Courtyard - whereupon this condition shall be removed from the licence. A copy of these plans should be kept with the licence at all times.

Review & Appeal

If we are wrong and these conditions prove insufficient to prevent crime and disorder or public nuisance at or associated with these premises, all parties are reminded that 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 conditions, the removal of a licensable activity or the complete revocation of the licence.

If any party is dissatisfied with this decision they are reminded of the right to appeal, within 21 days of this written decision, to a Magistrates' Court. Any party proposing to appeal is also reminded that under s181(2) of the Licensing Act, 2003 the Magistrates' Court hearing the appeal may make such order as to costs as it thinks fit.