

IN THE YORK MAGISTRATES' COURT

An appeal pursuant to the Licensing Act 2003

ZHONG LE CHEN

(t/a 'Regency Restaurants') (First appellant-premises licence holder)

-and-

YANG TONG FENG

(Second appellant-applicant for transfer)

-v-

CITY OF YORK COUNCIL (No. 2)

1. Further to my written judgment in this matter dated 11 November 2020, I have been asked to consider this case again.
2. In paragraph 6 of that judgment, I noted that so far as I was aware, neither their applicants nor their solicitors had filed any response to the respondent's application to dismiss the appeals.
3. As will be recalled, the appellants appeal against the decision of sub-committee of the Respondent to revoke the premises licences, held by the first appellants in respect of two properties in York. They argue that their appeal was not brought 'out of time', in other words beyond the date that Parliament has stipulated that any such appeal may be commenced.
4. I do not intend to reiterate the detail of my judgment of 11 November 2020.
5. The appellants had, in fact, through their solicitors filed submissions on this point dated 6 August 2020 by Mr Moran of counsel.
6. Regrettably, this document had not been drawn to my attention by 11 November 2020.
7. It is only fair to the appellants that I reconsider my decision in the light of those submissions.
8. I will endeavour not to repeat the detail of my judgment of 11 November 2020, except so far as is necessary.

9. In order to commence the appeal that the appellants wish to bring, against the decision of the relevant sub-committee of the Local Authority, they must give notice of appeal within the period of 21 days beginning with the day on which the appellant was (appellants were) notified by the licensing authority of the decisions against. (Schedule 5, Paragraph 9(2) Licensing Act 2003).
10. It is accepted that the decisions of the relevant sub-committee were communicated to the parties by email on 12 June 2020.
11. Written reasons in support of these decisions were emailed to the parties on 22 June 2020.
12. Mr Shaikh sent an email on 13 July 2020 indicating that he wished to appeal the decision and requested a hearing date.
13. This was 22 days after the notification.
14. I would reiterate the points and authorities at paragraphs 13 to 24 of my judgment of 11 November 2020.
15. There is a degree of formality required. The fact that Ms Wong telephoned the court and emailed it to the effect that there would be an appeal on 8 July 2020 does not cure this defect
16. The appellants make much of the Civil Procedure Rules 2010, ('CPRs') as amended, in their submission by Mr Moran.
17. This is a fallacy. Those rules only apply to the county court and the High Court. They have no application to the magistrates' court exercising its wide, but not well understood, civil jurisdiction.
18. Any argument on that point is quickly dispelled by a literal reading of CPR 2.1
19. The fact that there is no reference to the magistrates' court exercising its' civil jurisdiction in those rules does not mean that the CPRs apply in the magistrates' court. The magistrates' court is a creature of Statute. It can only do what Parliament allows it to do by Statute or Statutory Instrument, as may be interpreted from time to time by the High Court.
20. The application for dismissal by the respondent is confirmed.
21. I reiterate my observations at paragraphs 14 to 24 of my previous judgment.

District Judge (Magistrates' Court) Lower

8 December 2020

