

Status:  Positive or Neutral Judicial Treatment

***366 R (Bassetlaw District Council) v Worksop Magistrates' Court**

Queen's Bench Division

7 November 2008

[2008] EWHC 3530 (Admin)

[2010] L.L.R. 366

Slade J

7 November 2008

Premises licence — Unauthorised sales to under age persons — Review — Appeal — Licensing objectives — [Licensing Act 2003](#)

Following test purchases conducted by trading standards officers of Bassetlaw District Council (the council) at the off-licence premises of Mr and Mrs Jones, when alcohol was sold to two 14-year-old girls on four occasions, the council instituted a review of the premises licence. The licensing committee suspended the licence for 1 month. Mr and Mrs Jones appealed to the magistrates' court where the district judge allowed the appeal and instead imposed what were said by him to be additional conditions on the licence. He stated that it was not the function of the licensing authority to punish licensees for an infringement of licensing law and that the authority's powers were restricted to guidance or remedial action. The council sought judicial review of that decision for the purposes only of clarification as to the correctness in law of the decision.

Held – granting judicial review –

(1) The district judge had considered solely the provisions of the Guidance which were not specific to reviews arising in connection with crime. A proper reading and application of the Guidance, which governs the approach which the licensing authority must take in discharging its duties, requires where the circumstances render it applicable, the consideration of the paragraphs relating to reviews in connection with crime. Where criminal activity is applicable wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances deterrence is an appropriate objective and one contemplated in the Guidance issued by the Secretary of State.

(2) The Guidance contains specific provisions as to the approach to be adopted where criminal activity connected with the licensed premises is concerned. Plainly an appellate body must operate similar principles to those applicable to the licensing authority. The district judge failed to give reasons for a departure from the applicable guidance.

Statutory provisions considered

[Licensing Act 2003, ss 4\(2\), \(3\), 51, 52\(3\), \(4\), 146\(1\), 182](#)

Cases referred to in judgment

[Stepney Borough Council v Joffe](#); [Stepney Borough Council v Diamond](#); [Stepney Borough Council v White](#) [1949] 1 KB 599, [1949] 1 All ER 256, QBD

Representation

James Quirke Local authority solicitor for the claimant

The defendant did not appear and was not represented

Cur adv vult

SLADE J:

1 Bassetlaw District Council applies for judicial review of the judgment and decision of a district judge allowing an appeal from decisions made on a **367* licensing authority's review of a licence held by Mr and Mrs Jones. The licensing committee of the district council had reviewed the premises licence of the premises where Mr and Mrs Jones operated, in the light of offences which had taken place on 10 March 2007 namely the unlawful sale of alcohol on the premises to two 14-year-old girls. The girls were sent to the premises for test purchases in accordance with arrangements made by the trading standards office. The sales took place over a relatively short period of time. Each girl made a separate purchase or purchases, was served by one of two different young cashiers. Having regard to these matters, on review the licensing authority suspended the licence for the premises for 1 month. There was an appeal to the district judge. The district judge overturned the decision of the licensing authority and instead imposed what were said by him to be, 'additional conditions on the licence'.

2 Mr Quirke appears for the licensing authority. The district judge has served two statements in connection with this hearing, but otherwise takes no further part in it. The interested parties, Mr and Mrs Jones, were served with the notice of application but have not served an acknowledgement of service. I am also told that the licensing authority are not going to seek to overturn the determination of the district judge as to penalty. They seek, however, declarations as to the correctness in law of the decision and the judgment of the district judge.

3 The grounds for judicial review may be analysed as falling under five headings. As will become apparent later on in this judgment, two of those matters can, in my judgment, be taken together.

4 First, it is said that the district judge erred in holding that, in accordance with the Guidance issued by the Secretary of State, it is not the function of the licensing authority to punish licensees for an infringement of licensing law and provisions on its licence. Further, it is said that the district judge was in error in holding that, on a proper construction of the licensing provisions and guidance applicable, the licensing authority powers were restricted to guidance or remedial action which was the approach of the district judge. It is said that the steps which the licensing authority and the district judge on appeal may take include a range of powers which must be deployed according to the particular circumstances of the case.

5 Secondly, it is said that the orders made by the district judge which were in substitution for the suspension of the licence imposed by the licensing authority were, in effect, not additions to the conditions of the licence which applied up to that point. Save in one respect they were merely a reiteration of steps which were already being taken or were already in fact conditions of the licence.

6 Thirdly, it is said that the district judge erred in his approach to his own decision-making on appeal. It is said that he adopted a too generous approach to his powers on appeal in that he appears at 2, para 5 of his judgment to direct himself that he could take a decision standing in the shoes of the licensing authority having regard to the particular circumstances and considering whether the licensing authority's decision was justified. It is said that the district judge failed to give proper regard to the Guidance issued under [s 182 of the Licensing Act 2003](#) in that he did not state that he was **368* departing from such guidance in certain respects. Since, it is said, that he departed from such guidance, he erred in failing to state why he was departing from such guidance.

7 Fourthly, it is said that the district judge failed properly to apply and have regard to para 5.115 of the Guidance given under [s 182 of the Licensing Act 2003](#). This sets out and categorises as criminal certain activities which may arise in connection with licensed premises and which the Secretary of State considers should be treated particularly seriously. Included in the use of licensed premises for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and prosperity for crime of young people. It is said that the district judge failed to pay proper regard to that. Where there has been a compliant of an incident which is categorised rightly as criminal activity in connection with

licensed premises, it is said that the district judge failed to take into account para 5.113 of the guidance. This provides that the licensing authority's duty, in circumstances such as these, is:

‘... to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence.’

8 Finally, it is said that the district judge failed in his approach to pay proper regard to the guidance of Lord Goddard in the case of *Stepney Borough Council v Joffe* ; *Stepney Borough Council v Diamond* ; [Stepney Borough Council v White \[1949\] 1 KB 599](#) which the judge himself referred to at 2 of his judgment, para 5. In *Joffe* it was said that although on an appeal, such as this, there is a right to a re-hearing. The appellate court should pay regard to the fact that the duly constituted and elected local authority have come to an opinion on the matter. The appellate body ought not lightly to reverse their opinion.

9 >Discussion

10 I will briefly outline some of the relevant statutory provisions and guidance. Pursuant to the [Licensing Act 2003, s 4](#) , the licensing authority must carry out its function under the Act with a view to promoting the licensing objectives. [Subsection \(2\)](#) provides that:

‘The licensing objectives are—

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.’

11 Importantly, [s 4\(3\)](#) provides:

‘In carrying out its licensing functions, a licensing authority must also have regard to—

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...

- (b) any guidance issued by the Secretary of State under section 1.282.’

12 [Section 52 of the Licensing Act 2003](#) applies where an application for a review of licence under [s 51](#) has been made. [Section 52\(3\)](#) provides:

‘The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection 4, if any, as it considers necessary for the promotion of the licensing objectives.’

13 Those objects are set out in [s 4](#) .

14 [Section 52\(4\)](#) provides that the steps are:

- (a) to modify the conditions of the licence ...
- (b) to suspend the licence for the period not exceeding three months.
- (c) to revoke the licence.

For this purpose the conditions of the licence are modified. If any of them is altered or omitted or any new condition is added.’

15 It is to be noted that [s 146\(1\) of the Licensing Act 2003](#) provides:

‘A person commits an offence if he sells alcohol to an individual aged under 18.’

16 Pursuant to [s 182 of the Licensing Act 2003](#) guidance is issued. I have already outlined the requirement for the licensing authority in carrying out its functions to do so in accordance with the Guidance and to have regard to it. The background and the approach which should be taken to that guidance is set out in para 2.3 of the Guidance itself which was applicable at the relevant date. The Guidance was revised with effect from June 2007. Reference is made in para 2.3 to [s 4 of the Licensing Act 2003](#) which provides that:

‘In carrying out its functions, a licensing authority must have regard to guidance issued by the Secretary of State under [section 182](#). The requirement is therefore binding on all licensing authorities to that extent.’

17 It is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise. So long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it, if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their decisions. Departure from the Guidance could give rise to an appeal or judicial review and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

18 I will set out here the passages in the Guidance material to this application. Paragraph 5.99 provides:

‘Proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems ***370** associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licence by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises.’

19 The provisions relating to the power of the licensing authorities in conducting a review are set out in para 5.107 and following. Paragraph 5.107 provides:

‘The 2003 Act provides a range of powers for the licensing authority on determining and review that it may exercise where it considers them necessary for the promotion of the licensing objectives.’

20 At para 5.109, there are set out the steps which may be taken by the licensing authority where it considers that actions under its statutory powers are necessary. Those include modification of the condition of the premises licence, suspension of the licence and revocation of the licence; the suspension, being for a period not exceeding 3 months.

21 Paragraph 5.110 provides that:

‘In deciding which of the powers to invoke the licensing authority should so far as possibly seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.’

22 Paragraph 5.111 refers to the need for any detrimental financial impact of a licensing authority's decision, in particular of suspension of a licence, to be considered.

23 A separate section in the Guidance deals with reviews arising in connection with crime. In my judgment these provisions are particularly material to this case. Paragraph 5.112 states:

'A number of reviews may arise in connection with crime that is not directly connected with licensable activities.'

24 It is agreed by Mr Quirke that the sale of alcohol on the premises to under age drinkers is connected with licensable activities. Indeed, in para 5.115 such activity is expressly referred to in the following terms:

'There is certain criminal activity that may arise in connection with licensed premises which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises [and there are enumerated a number of crimes ... which include] for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people.'

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25 Of importance to the consideration of the case before me is also para 5.113 which provides:

'Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps are necessary to be taken in connection with the premises licence for the promotion of the crime prevention objective.'

26 The paragraph continues:

'The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence.'

27 At para 5.114, there is a reference to the fact that it is not the role of the licensing authority to determine guilt or innocence, but it is stated that:

'At the conclusion of the review, it will be for the licensing authority to determine, on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the licensing act objectives in respect of the licence in question regardless of any subsequent judgment in the courts about the behaviour of individuals.'

28 I now turn to a consideration of the various heads of challenge which Mr Quirke, on behalf of the licensing authority, makes to the judgment and determination of the district judge in this case. In the course of the discussion I may refer not just to the district judge's judgment but also, albeit maybe briefly, to a statement filed by him in these proceedings. Taking grounds 1 and 4 of challenge together, the main issue raised by those grounds is that the district judge misdirected himself in considering that the function of the authority and his function as the appellate body was not punitive but in effect was remedial. It is submitted that the approach of the district judge was to confine his consideration to remedy of the cause of the breach of the licence provisions and of the law.

29 At paras 4 and 5 of the judgment in the section headed, 'Discussions', at 10 the district judge said that:

'The function of the local authority, and now this court, must be first to establish why the four sales of the alcohol to girls A and B occurred on 10 March 2007. Secondly, to take such steps, if any, under [section 52](#) of the Act as are necessary to ensure that no further sales occur thereby promoting the two licensing objectives principally engaged by this case: namely, the prevention of crime and disorder, and the protection of children from

harm. The step or steps taken must be the minimum intervention necessary to achieve those aims. What is necessary is a question of value and judgment which will involve the local authority or the court taking account of all the circumstances of the case.'

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30 In my judgment, the language of para 5 indicates clearly that the district judge was considering solely the provisions of the Guidance which were not specific to reviews arising in connection with crime. In my judgment, a proper reading and application of the guidance which governs the approach that a licensing authority must take in discharging its duties requires, where the circumstances render it applicable, the consideration of the paragraphs relating to reviews in connection with crime. While it may be said that in reviews which do not engage a requirement to consider the paragraphs giving guidance on the approach where there is activity in connection with crime related to licensed premises, the general provisions which apply to all reviews may result in the approach outlined in para 5 being the appropriate one to follow. Indeed, para 5.110, which applies generally to the exercise by a licensing authority of its powers on review, does state a requirement, so far as possible, on the authority to establish the cause or causes of the concerns and that remedial action taken should be directed generally to these causes and should always be no more than a necessary and proportionate response. That observation, in my judgment, is directed to the overall approach to the exercise by the licensing authority of its powers on a review. When considering reviews arising in connection with crime, decisions of the licensing authority would have to be reasonable in all the circumstances and that would necessarily engage a requirement to consider necessity and proportionality.

31 However, in my judgment the district judge failed to have regard to the requirement on a licensing authority conducting a review on the grounds that the premises had been used for criminal purposes to take steps with view to the promotion of licensing objectives in the interests of the wider community. That is a requirement set out in para 5.113. For reasons given earlier, and in particular by reason of the fact that para 5.115 clearly specifies criminal activity which may arise in connection with the use of the licensed premises for the purchase and consumption of alcohol by minors, that provision is engaged in this case.

32 Accordingly, in my judgment, the district judge misdirected himself by confining his consideration of the case to the test which would be appropriate where no criminal activity was concerned. Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State.

33 The district judge held that the provisions are not to be used and cannot be used for punishment. That may strictly speaking be correct. However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable. Therefore, when the district judge confined himself, as in my judgment he did, to the considerations of remedying, and adopted only the language of para 5.110 in his considerations, he erred in law. In my judgment, that error is sufficient to undermine the basis of his decision. On those two grounds alone, grounds 1 and 4 as I have outlined, I allow this application for judicial review. ***373**

34 However, I continue to consider under the various headings the other grounds raised. The orders made by the district judge are challenged. He added to the existing conditions of the licence six matters as to which I am told that five were already present but not properly implemented. The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14-year-old girls. In effect this is a perversity challenge to the decision of the district judge. Even if the approach of the district judge had been correct, which in my judgment it was not, it may well be that the order he made was perversely minimal to meet the circumstances and gravity of the case.

35 Under the third general head of challenge, it is said that the district judge failed to pay proper regard to the decision of the licensing authority. Whereas he directed himself in accordance with the dictum of Lord Goddard in *Joffe* which he set out at 2, para 5 of his judgment, nonetheless, it is said that he failed to pay regard to the initial decision of the licensing authority when coming to his decision. Since in my judgment the district judge erred in other respects I determine this judicial review challenge on other grounds.

36 It is finally said that the district judge erred in that he departed from the Guidance issued under [s 182 of the Licensing Act 2003](#) but failed, as he was obliged to do, to state that he was so departing and failed to give reasons for so departing. The departure, it is said, is constituted by the failure to give recognition and carry into effect the provisions of paras 5.113, 5.115 and 5.116.

37 Earlier in this judgment I set out the basis upon which licensing authorities must pay regard and be governed by guidance issued. Plainly an appellate body must operate similar principles to those applicable to the licensing authority. The guidance contains specific provisions as to the approach to be adopted where criminal activity connected with licensed premises is concerned. He failed to give reasons for a departure from applicable guidance. The district judge in reaching his decision simply referred to the circumstances of the case and the fact that what is necessary is a question of the valuation and judgment which will involve the local authority or the court taking into account all the circumstances of the case, that is at 10 of his judgment, para 5. The district judge in my judgment failed to identify why and in what respects he was departing from the guidance. I find that the district judge erred in failing to give reasons for departing from the applicable guidance.

38 Accordingly, for the reasons set out in this judgment I allow this application for judicial review and find that the district judge erred in law in his approach to determining the appeal of the licensees in this case. ***374**

Kerry Barker, Barrister

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No need for a declaration that the district judge erred in law in his approach to the appeal. No order for costs.

(c) Jordans

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