

Licensing & Environmental Health Seminar

Llandrindod Wells

9th July 2009

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Kuits and the Areas of Law that we practice

- Banking and Property Finance
- Commercial Property
- Corporate
- Intellectual Property
- Licensing
- Litigation
- Residential Property
- Tax

Our Team:

Anthony Lyons

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Licensing Objectives

- The Prevention of Crime and Disorder
- Public Safety
- **The Prevention of Public Nuisance**
- The Protection of Children from Harm

Crosby Homes v Birmingham City Council (1)

The Nightingale Club (2)

“Public Nuisance” is not defined in the Licensing Act 2003

- “Retains its broad common law meaning”
- Guidance is a “fudge”
- R v Rimmington
- R v Goldstein

Lord Denning:

“A public nuisance is a nuisance that is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large.”

D J Zara:

“It may be the case that on occasions a private nuisance has occurred, but the licensing objectives do not require me to consider that.”

St Albans v Patel

Proceedings under EPA 1990 for breaches of
Noise Abatement Notice

Best Practical Means

The Magistrates dismissed the complaint

Magistrates were requested to state a case
for consideration of the High Court

“Mrs Lockley either did or should have known that there were licensed premises there when she moved to her address approximately four and a half years ago.”

Noise Act

Permitted level is set at 34dBA if the underlying level of noise is no more than 24dBA or 10 dBA above the underlying level of noise where it exceeds 24 dBA

Felicity Harris-Knott
Licensing Solicitor
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Applications, Responses & Conditions

The role of the EHO within licensing

- Responding to applications
- How can the EHO influence the outcome of an application?
- Necessary & proportionate.
- Conditions

Cumulative Impact Policies

- Who has one?
 - Tenby, Haverfordwest
- The arguments for and against

Claire Morris
Kuit Steinart Levy LLP

VICINITY

Definitions

Definition of ‘interested party’

- Who defines vicinity?
 - Licensing Authority
 - Judicial Review (Wednesbury Rule)
- How is ‘vicinity’ defined?
 - Dictionary
 - Guidance
 - Licensing Authority

Clarification

4 Wins Leisure Ltd, R (on the application of) v The Licensing Committee For Blackpool Council & Ors, Court of Appeal - Administrative Court, August 31, 2007, [2007] EWHC 2213 (Admin)

Gambling Act 2005

- Sufficiently close / conducting business likely to be *affected*

Licensing Act 2003

- *Vicinity* -v - affected

Mr Justice Sullivan “[this may be] an absurd position...that that is the effect of Parliament’s definition of “interested party” in section 13(3)”

Definitions of ‘vicinity’

- Fixed radius
 - E.g. Trafford - 100m
 - Guideline only
 - Statement in policy document
- Sending letters to residents?
 - Inferences
 - Limit
- Stretching the definition
 - Congregants of a Church

Guidelines in 4 Wins

Reasons for judicial review

Failure to consider material factors

- Size of premises (applicant's / objector's)
- Town saturation area
- Not mechanical measurement (proximity -v- vicinity)
 - Proximate but separated
 - Distant but strong links

Irrationality (Wednesbury Rule)

- “...no reasonable licensing panel with the local knowledge that this licensing panel had, could have concluded the premises were not in the vicinity.”

Inaudibility

- The arguments for and against
- Is it lawful?
- Enforceability
- Other mechanisms

Outside Areas

- Smoking ban
- Tables and Chairs Licences
- DPPOs
- Influencing policy

Reviews

Different types of Review:

- Section 51 Review brought by a Responsible Authority or Interested Party
- Section 53A Summary Review on Application of a Senior Police Officer
- Section 167 Reviews following Closure Orders

Section 51 Review

- Either IP or RA may apply
- Must give notice to Holder of Premises Licence and each RA on the same day

Repetitious means if it is

Identical or substantially similar to:

- Ground in an earlier application
- Representations considered in a new licence application
- Representations which would have been so considered but excluded because of provisional statement rules

Steps that can be taken:

- a) To modify the conditions of the licence;
- b) To exclude a licensable activity from the scope of the licence;
- c) To remove the designated premises supervisor;
- d) To suspend the licence for a period not exceeding three months;
- e) To revoke the licence.

The LA must notify following determination:

- a) The Holder of the licence;
- b) The Applicant;
- c) Any person who made relevant representations and
- d) The Chief Officer of Police.

Appeal

Determination does not have effect for 21 day appeal period or until appeal is disposed of.

Section 53A

Summary Review on Application of Senior Police Officer

Needs certificate that it is his opinion that the premises are associated with serious crime or serious disorder or both

Interim Steps

- Modification of the conditions of the premises licence
- The exclusion of the sale of alcohol by retail
- Removal of the DPS
- Suspension of licence.

Review following Closure Order

Closure Order is where Senior Officer believes

- There is or is likely imminently to be disorder
- A public nuisance has been caused by noise coming from the premises and the closure of the premises is necessary to prevent that nuisance.

Premises can be ordered to be closed for a period not exceeding 24 hours beginning with the coming into force of the Order. The conduct of the premises' management may be relevant. A Closure Order can be cancelled or extended.

- Once made the premises licence must be reviewed.

Magistrates' Court may:

- a) Revoke the Closure Order
- b) Order the premises to remain or to be closed until determination
- c) Order premises to remain closed until determination but subject to exceptions
- d) Order the premises to remain closed until such conditions as may be specified are satisfied.

TRANSLATING THE OPERATING SCHEDULE

Bristol City Council v Bristol Magistrates' Court (Somersetfield) 24/02/09

- 24 alcohol licence and LNR
- Licence granted with modifications
- Magistrates removed x5 conditions
- Judicial review

Law

s.18(2)(a) - no representations

...*“conditions as are consistent with the operating schedule”*

s.18(3) - representations

...*“take steps necessary for the promotion of licensing objectives”*

s.18(4)(a)(i)

“...to grant licence subject to conditions mentioned in ss(2)(a) modified to such extent as the authority considers necessary for the promotion of licensing objectives.”

s.18(5)

“modified”- altered / omitted / added

Bristol City Council

Validity of application

- Language of conditions
- Comprehensiveness of conditions

Obligation to transfer conditions

High Court Ruling

- Enforceable premises licence
 - Vague OS does not invalidate application
 - Restate OS in enforceable terms - Secretary of State Guidance
 - Impose specific OS conditions in more specific manner
- *Power* to invoke conditions consistent with OS
 - *Not* obligation - consider detrimental 'conditions'
- Power invoked when condition necessary to promote objectives
 - Necessary?
 - Secured by legislation?
 - Secretary of State Guidance
 - Beyond legislation - factual basis

Implications

Existing legislation - what does it cover?

Cautions

- Unopposed applications
- Condition lists / inclusion policy

Minor Variations

Minor Variations

Consultation ended on 1st September 2008
in England and 9th September 2008 in
Wales.

Application can not be made so as to:

- extend the period for which it has effect,
- vary substantially
- specify an individual as DPS
- add for sale by retail as an activity
- authorise -
 - i) sale by retail or supply of alcohol between 11.00pm and 7.00am, or
 - ii) an increase in the hours on any day during which alcohol may be sold by retail

LA must:

- a) Consult with such RA's as it considers appropriate,

and
- b) take into account any comments made by those Authorities in relation to the application.

If the LA considers that:

- a) the application does not have an adverse effect on promotion of the licensing objectives, or
- b) if more than one variation is proposed, none of them, whether considered separately or together would have such an effect.

it must grant the application

Determination must be made within fifteen days

- If after fifteen days the application is treated as rejected, and
- The Authority must immediately return the fee.

Code of Practice for Alcohol Retailers

Mandatory and Discretionary Conditions

New mandatory conditions such as:

- Banning all inclusive drinks promotions
- Banning the dispensing of alcohol directly into the mouth.
- Ensuring all bars offer alcohol in dual measures so that customers can have the choice between singles or doubles of either spirits (25/35ml measures) or large or small glasses of wine (125/175ml measures).

Mandatory and Discretionary Conditions

- Requiring retailers to display information about alcohol unit content of drinks so that customers can make an informed decision about how much they drink and the effects it may have on their own health.
- Providing free tap water

Discretionary Conditions such as:

Restricting happy hours or pub crawl promotions.

- Banning irresponsible bulk buy promotions.
- Requiring staff to operate Challenge 21 policy.
- Requiring door staff to check for weapons and/or drugs.
- Banning glass containers or ensuring glasses are collected at regular intervals.
- Ensuring CCTV is in operation.
- Displaying information on location of public transport links and taxi numbers.

- Currently out to consultation. Must be responded to by 5th August 2009.
- Go to www.consultations.homeoffice.gov.uk/alcohol-licensing-authorities/

Blanket Reviews & The Mandatory Code of Practice

The case of Oldham Council

- Is it lawful?
- Is it a good idea?
- Have they jumped the gun?
- Are there any alternatives

Policing & Crime Bill 2009

Lap Dancing

Entertainment Venue



Sex Encounter Establishment

What is a Sex Encounter Establishment?

- Any premises where **relevant entertainment** is provided or permitted to be provided by or on behalf of the organiser in front of a live audience for the financial gain of the organiser of the entertainment.

What is relevant entertainment?

Live performance or live display of **nudity** and must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience

The following are not Sex Encounter Venues:

- Sex shops and sex cinemas
- If the premises at the time in question has not provided relevant entertainment on more than eleven occasions within the previous twelve months AND
- Occasion has not lasted for more than twenty four hours AND
- Has been a one month gap.

Local Authority can issue prescribed limits on the number of sex establishments.

Policing & Crime Bill

Consuming alcohol in a designated public place

Penalty rises from £500.00 to £2500.00

Policing & Crime Bill

- Persistently possessing alcohol in a public place. A young person under 18 can be prosecuted if they are caught with alcohol in a public place on three or more times within twelve months
- Maximum punishment Level 2 (£500.00)

Policing & Crime Bill

- Persistently selling alcohol to individual under 18 on two or more occasions within three months (instead of three or more)
- Power to confiscate a sealed container from a young person in a public place without need to prove consumption or intention to consume
- Allows Police to return individuals to their home or place of safety

PROSECUTIONS - WHO IS LIABLE?

Unauthorised licensable activities (s.136)

Underage sales (s.146)

Unauthorised licensable activities (s.136)

s.136 (1) “A *person* commits an offence if (a) he carries on or attempts to carries on....(b) he knowingly allows a licensable activity to be so carried on...”

Hall & Woodhouse Ltd v Poole Borough Council;
[2009] WLR (D) 131

- Freehold and premises licence holder
- No defence offered

Appeal to High Court

s.136 aimed at person...“as a matter of fact”

Focus of s.139(1)(a) defence

- Persons own actions

Express provision for liability of PL holder?

- cf s.140(1) & (2)(b)(i) - allowing disorderly conduct
- cf s.141(a) & (2)(b)(i) - sale of alcohol to drunk

Appeal to High Court

S.16(1)(a) ‘carrying on a business’ on
licensed premises

Remedies available to errant premises
licence holders

No conviction - law / fact

Underage sales

- s.169 1964 Act
“Person commits offence if, in licensed premises, he sells alcohol to person under 18 years old.”

Haringey v Marks and Spencer 2004

- ‘Person’ not include corporate body
- Seller & *licensee* (unless due diligence)

s.146 same meaning as 1964?

s.146 Licensing Act 2003

“A person commits offence if he sells alcohol to individual aged under 18”

- *Somerfield (yes)*
 - Violent Crime Reduction Act 2006
 - Covers liability omitted in s.146

Recent rulings

- *Sainsburys (no)*
 - New Act / absurdity
 - Premises licence holder / operating schedule / commercial interest
 - Failure to specify doesn't automatically exclude liability
 - New offence in VCR 2006
 - S.147A(6) VCR 2006 - prohibits repeat prosecution
 - S.146 - "person...individual"
- *Aldi (no)*
 - Defendant
 - Personal licence holders / due diligence
 - Ruling
 - No express exclusion of liability
 - Interpretation Act 1978 Schedule 1

Thank you
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