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Justices' Reasons – 7th September 2005

Punch Taverns Ltd (Cavalier Inn) –v- Leeds Licensing Authority [2004101]
Punch Taverns Ltd (Hampton Hotel) –v- Leeds Licensing Authority [2003856]
Punch Taverns Ltd (Highland Inn) –v- Leeds Licensing Authority [2003937]
Punch Taverns Ltd (Railway Inn) –v- Leeds Licensing Authority [2003966]

The court is considering 4 separate appeals made by Punch Taverns Limited, ("the complainant") against decisions made under the Licensing Act 2003 by Leeds City Council's Licensing Committee, ("the Licensing Authority") the defendant in these cases. The Court is aware that these are amongst the first appeals to be heard in the country and that the opportunity has arisen for the new legislation to be examined in some detail. We will follow the approach of the parties and give our reasons covering all four cases but will consider each case individually in reaching our conclusions.

In each of these cases the complainant is the owner of the premises. Those premises are leased to persons who hold a justices' licence under the Licensing Act 1964. It is the intention of the complainant to continue leasing these premises for the purpose of licensable activities, to use the language of the new Licensing Act and accordingly, they made applications for premises licences under the transitional arrangements in the Act for existing licensed premises. At the same time, the complainant sought a variation of the licences, to take advantage of the opportunities provided by the new legislation. The Licensing Authority, in Sub-Committee, heard the applications and whilst granting the variations sought, did so for shorter periods than sought and imposed a number of different conditions on those licences. It is the variation process that led directly to these appeals coming before the court.

The Licensing Act 2003 gives a right of appeal against a decision of a Licensing Authority to the magistrates' court under the complaint and summons procedure. It has been accepted by both parties that the hearing is a re-hearing of the application. Accordingly the court must hear evidence of what was before the Committee originally but any other evidence, relevant to the appeal, that have arisen since that time, may also be considered. In these cases, much of the written evidence was received from the Licensing Authority in the form of the application forms, the reports to and decision of the Sub-Committee and all this evidence was agreed. The complainant did not provide any agreed written evidence but they did file statements from a witness Mr Moir, concerning existing legislation on Health and Safety related matters. The court was also provided with skeleton arguments and supporting documentation and the parties made extensive submissions on the law. The Court has also been provided with a copy of the Local Authority Statement of Licensing Policy and the Secretary of State's Guidance issued under s.182 Licensing Act 2003. We also took the view that it was necessary for the Court to be satisfied that the appropriate notices had been made and displayed in accordance with section 35(1) Licensing Act 2003.

We heard evidence from three witnesses; Mr Moir for the complainant, Mr Waters of the Fire and Rescue Service and Miss Copley a local authority Health and Safety team manager. Mr Moir gave evidence for the complainant that he had identified existing legislation for each of the disputed conditions and expressed an opinion that they duplicated the existing legislation. In cross examination he accepted that he had no personal knowledge of the premises, no knowledge of the operation of the legislation in the area, had no knowledge of the Licensing Act 2003 nor the Guidance issued under it and that he had reached his opinions by looking at decision letters provided by those instructing him.

Mr Waters gave evidence as to the Fire and Rescue Service request that a fire alarm be installed at the Hampton Hotel, to cover all parts of the premises, both private and public areas. He acknowledged that it was technically possible to utilise existing legislation to achieve the same result, but explained that the view of the Fire and Rescue Service was that the new legislation provided a better opportunity to fulfil that aim when promoting public safety.

Miss Copley's evidence was thorough and professional, clarifying her department's view as to what the legislation required of them. She acknowledged that provisions exist under current legislation, but she considered that the new legislation imposed a duty on her department to be pro-active in her approach to public safety. She rejected any suggestion that the department should only act when there was a history of accident or public safety incidents, on the bases that in many cases these would not have come to the attention of the department. She stated that the conditions had been drafted to clarify what the Licensing Authority would expect from licence holders. She further stated that the approach of her department was to discuss and advise areas of concern with applicants, with a view to reaching agreement and only applying a "light touch" when necessary, in accordance with the Guidance, and not imposing onerous obligations upon them. Whilst acknowledging that there was some duplication in certain areas, in these cases existing regulations had not been complied with and no agreements had been achieved with the applicants in advance of the hearing. She stated that the applicants provided no evidence that a risk assessment had been completed for any of the premises and, by way of example, that a gaming machine in the public area of the premises would not be considered as "workplace equipment" in her opinion and would therefore not be covered by the workplace regulations.

We were also referred briefly to the various cases and to an opinion in a book on the new Licensing provisions.

Legal Submissions

It was submitted on behalf of the Complainant that the imposition of conditions was not lawful on three grounds. First, it was not "necessary" as required by the Licensing Act 2003; second, it was contrary to the Guidance issued which says that there should be no duplication of existing provisions and third, that it was contrary to common sense because licence holders may be under a misapprehension that these were their only duties in relation to public safety.

It was also argued that the approach of the Licensing Authority, effectively allowed them to create their own legislation and to place licence holders under a form of double jeopardy which could lead to a review of the licence with all the implications that this entails. We note at this stage, that no evidence was produced to support these arguments and we cannot concur with these submissions.

The Appellant also submitted that the statutory test was the question of "necessity" and that it had not been established that conditions were necessary as there was no history of problems with any of these premises. The word "promote" in the legislation was not intended to create a positive duty for the relevant authorities and that any steps taken should be a proportionate response.

A further submission was in relation to the *vires*, namely extent of the power given to the Licensing Authority under the Licensing Act. It was recognised that there was no existing High Court guidance in this area and it was submitted that the law is that

where a hearing must be held, the powers of the Committee extend only to the representations made and no further.

The final submission was that the condition should, in law, only apply to the varied hours and not the whole of the operating period. It was submitted that the applicant originally had a licence to operate free from conditions and after applying to vary the licence, was encumbered with a list of conditions. We do not accept that there is any justification in the legislation or Guidance for considering that the conditions apply only to the varied hours. In this case the applicants were not previously the holder of any form of licence under the 1964 legislation.

It was submitted on behalf of the defendant Licensing Authority that the complainant had failed to provide any evidence to support the contention that the initial decision of the Committee was either wrong (in the case of the Railway Inn), or the conditions were unnecessary or disproportionate (in respect of the other three premises). It was the view of the Licensing Authority that the main question concerned statutory interpretation, of the Act, regulations and s.182 Guidance and that their approach was based on practical effectiveness.

Decisions

After lengthy deliberation, we conclude that the complainant had not produced evidence to support the contention that the decision of the Licensing Authority was either wrong, or that the conditions were unnecessary or disproportionate. Accordingly, these appeals must fail.

However, we will take the opportunity to give some indication as to the legal arguments presented to the court. We do not consider that the imposition of conditions in these cases was unnecessary, nor contrary to the s.182 Guidance. The Guidance itself in Annex E provides examples of possible conditions each of which, according to the evidence presented before this court, already exists in other legislation. Each of the conditions, on the evidence presented to this court, goes further than or clarifies, what is required in accordance with the clear wording of s.35(3).

We reject the contention that the imposition of these conditions could create confusion.

We reject the contention that the imposition of these conditions is disproportionate because of the criminal sanctions on breach.

We take the view that the word "promote" in the legislation should be given its ordinary meaning and that it does not restrict the Licensing Authority to a reactive, rather than pro-active, approach to their duties.

We also reject the submission that the power of the Committee is restricted to applying conditions that focus only on the representations made. The wording of section 35(3) is clear and unambiguous and the steps that the Committee may take are equally clearly set out in s35(4), to modify the conditions (whether by altering, omitting or adding conditions) or to reject the application.

We are aware that our powers under the Licensing Act to dispose of this hearing are:
to refuse the appeal;
to substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
to remit the case for disposal in accordance with the court's directions.

We have heard submissions about how to exercise our powers, but in the light of our findings, we feel that the only course open to the court is to refuse the four appeals.

Mrs D A Menzies JP, Mr H A Beck JP & Mr S G Fodden JP