

17 July 2006

High Court licensing success helps Guildford hotspot (April 2006)

A landmark decision in the Royal Courts of Justice has upheld Guildford Borough Council's application of its policy regarding extended licensing hours in Bridge Street.

JD Wetherspoon applied for a three-hour extension, for every night of the week, to its existing licence for Lloyds No 1, Rodboro Buildings in Bridge Street, Guildford. The council's licensing sub-committee refused this request, supported by the concerns expressed by the police regarding crime and disorder and public nuisance in this part of the town centre.

Under the Licensing Policy, Bridge Street is a designated 'cumulative impact area' due to its high concentration of bars and nightclubs. Any applicant for a new licence or 'material variation' to an existing licence has to prove that it will not increase this impact. The JD Wetherspoon application to extend drinking hours was judged to be a 'material variation' of the existing licence within this sensitive area. JD Wetherspoon did not agree with this interpretation of Guildford Borough's new policy and applied for judicial review by the High Court

JD Wetherspoon has agreed to pay the council's legal costs of approximately £23,000 in defending this claim.

Chairman of the Licensing Committee, Cllr David Wright, says: "We are extremely pleased that the High Court has ruled that we applied our policy in the correct manner. This will have a positive impact on our community and will also support the efforts of other local authorities wishing to maintain law and order in their city centres".

Cllr Wright continues: "Bridge Street has no spare capacity for new licence applications and the only other option for licensees is to apply for longer hours for existing licences. This ruling will ensure that the council, together with the police, will be able to carry on using the policy to effectively control licensing activity in this area of the town and help make Guildford a safer place for everyone".

In charge of policing West Surrey Division, Chief Superintendent Kevin Deanus, says: "Surrey Police supported the designation of Bridge Street as a 'cumulative impact area' and objected to the extension of existing licensing hours. We welcome this decision which will help the efforts of Surrey Police to reduce alcohol-related disorder and anti-social behaviour in the town, as well as protecting the community. Guildford is a vibrant town which has so much to offer. This decision will not only ensure that people are safe, but also feel safe

Leeds Justices' Reasons – 1st November 2005

Punch Taverns Ltd (White Horse) –v- Leeds Licensing Authority [2029212]
Punch Taverns Ltd (Engine Inn) –v- Leeds Licensing Authority [2030191]
Punch Taverns Ltd (Bulls Head) –v- Leeds Licensing Authority [2030353]
Punch Taverns Ltd (Railway) –v- Leeds Licensing Authority [2030489]
Punch Taverns Ltd (White Cross) –v- Leeds Licensing Authority [2030832]

The court is considering 5 separate appeals made by Punch Taverns Limited, (“the complainant”), the owners of the premises appealing against the decisions of Leeds City Council’s Licensing Committee, (“the Licensing Authority”) the defendant in these cases. The court has heard evidence about the cases as a whole and has been directed to consider the conditions imposed on each individual premises in the light of the evidence and the comments made about the law.

The complainants made applications seeking premises licences under the transitional arrangements introduced by the Licensing Act 2003. As part of those applications they also sought to vary the licences in accordance with the Act and this led to a hearing before the Licensing Sub-Committee, as relevant objections had been made. The complainants now exercise their right to appeal to the magistrates’ court and it is accepted by all parties that the appeal proceeds by way of a re-hearing.

We have been provided with a large bundle of evidence. In relation to each premises there is a copy of the initial application by Punch Taverns, a copy of the report presented to the Sub-Committee and the detailed decision letter from that Committee. In addition, witness statements have been provided both from responsible authorities and from interested parties, on behalf of Leeds City Council and from a health and safety consultant, the regional operations manager, a training consultant and the solicitor for the complainants. We have also been provided with lists of “contested conditions” culminating in a final 18 page list prepared by the local authority.

Witnesses were called by both parties and included some of the local residents affected by some of the variation applications. Michael Waters gave evidence of the views of the West Yorkshire Fire and Rescue Service and the representations he made regarding the application in respect of the White Horse. He explained that his service took the view that the Licensing Act 2003 provided an opportunity to promote the public safety objective in a manner which had not previously occurred and was considerably more effective than serving improvement notices. He also stated that there had been no consultation by Punch Taverns prior to the original hearing.

Brian Kenny gave evidence regarding environmental health matters relating to the inspection at each premises. He was questioned in detail about the issue of noise and the issue of what is meant by “public nuisance” in the context of the Act. He was of the view that the service of enforcement notices was not the best way to deal with such problems and that the new Act provided for the promotion of many things that are considered to be best practice. Following each visit a letter was sent to the applicant but there was no response prior to the original hearing.

Sergeant Gary Howarth gave evidence regarding the concerns of West Yorkshire Police over CCTV, age-related issues and drug use in the context of crime and disorder. He expressed the view that longer opening hours made it particularly important to have precautionary measures

in place, based on his experience of policing in the city centre where opening hours are already longer and the fact that Police resources would be unable to cover more rural areas during those extended hours. He considered that the Police were best placed to make assessments and that was why they played an important part in the variation process. He regretted that there had been no consultation by the applicants prior to the original hearing which might have removed the necessity for some of the conditions the Police were seeking.

Malcolm Robinson gave evidence about the noise he was suffering at his home adjoining the White Horse. He had objected to the application and said he was speaking on behalf of other residents also. For his part he felt the noise levels were unacceptable and that one occasion he had been driven out of his home by the noise. He was opposed to any extension in the licensed hours, even with the conditions imposed by the Licensing Authority.

Cynthia O'Neill's evidence was also concerned with the noise nuisance but she also told the court about her unsatisfactory experience with the landlord and with Punch Taverns, trying to resolve the problems. She was also opposed to any extension of hours and said she did not know that she could have appealed against the variation that was granted.

Counsellor Coulson gave evidence of the objections made by local residents within his ward who were affected by the application in respect of the White Cross.

Gurdeep Mudhar gave evidence about the inspection of the White Horse, his initial reservations about those premises and thereafter the complaints received from neighbours. He also told the court that other neighbours had raised concerns with him although they felt unable to take any formal steps for fear of reprisals. He was also critical of the lack of response from the applicants to the detailed information provided. It was clear that the problems had started to occur since a new landlord had taken over the premises and that Punch Taverns did nothing to allay his concerns.

Claire Copley gave evidence about the approach taken by the health and safety officers and the risk assessment undertaken in respect of each premises. She told the court that there had been a complete failure to agree how to deal with conditions on the part of Punch Taverns, in contrast to other operators. The conditions that were sought were now revised in the light of experience and discussions with other operators. She was confident that the conditions sought, including those where the condition was recorded as "met" at the time of the assessment, were not excessive and were a practical solution. In her opinion the use of an enforcement notice was a method of last resort and preferred to promote good practice and educate businesses. She was clear in her view that the legislation was designed to be used proactively and had some concerns that there was doubt about who controlled the premises where the premises licence holder was someone other than the person with day to day responsibility. Her approach was to use courtesy to achieve the desired outcome.

The complainant called Stephen Rhodes, a health and safety consultant, to give evidence about his visits to each of the premises and his comments on the conditions imposed. He was concerned that the Licensing Authority was seeking to go beyond what the Licensing Act 2003 required and deal with matters that ought to have been achieved already under existing regulation. In his opinion, the authority was applying standard conditions instead of treating each application on its merits and that there were significant problems over enforceability of some of the conditions, such as audibility test proposed. His principal objection was imposing conditions where there had been no history of problems.

On behalf of Punch Taverns, Janette Howgate gave evidence about the steps that the company had taken to prepare for the change in legislation. She had little personal knowledge of the premises under consideration and was uncertain about which conditions were actively opposed. She explained the lack of contact with the responsible authorities was fundamentally caused by the pressure of making so many applications and assisting their tenants with their personal licence applications.

We also heard evidence from John Coen, solicitor, on the question of the statutory notices required when a variation application is made. We considered that evidence he sought to include, regarding the manner in which other licensing authorities had dealt with Punch Taverns' applications was not relevant to these appeals and therefore excluded that evidence.

Finally, we heard evidence from Geoffrey Lloyd, training consultant for Punch Taverns. He was unable to say that any of the licensees at the premises had attended the course, although he understood that two of them may have had some training. He told the court that the Punch Tavern's course had won industry awards and was, in his opinion, at the leading edge in training compared with other groups'.

Legal Submissions

Mr Findlay submitted that where conditions were imposed, they applied to the whole of the licensing hours and not just to the extended hours and addressed the court on the question of overlap in regulatory regimes. His general proposition was that there was a duty on the licensing authority and the court, to promote the licensing objectives when undertaking functions under the Act. He relied on the legislation, the local authority Statement of Licensing Policy (that had not been the subject of a legal challenge), the Guidance issued under s.182 and a recent letter from the Secretary of State which reiterated the paramount importance of promotion of the licensing objectives. It was his contention that just because there are regulations in relation to an issue, that does not necessarily mean that no condition could be imposed – much would depend on the circumstances in each case. He directed our attention to the approach taken in the field of planning law and urged the view that just because there is an overlap that does not of itself prevent the imposition of a condition on the licence.

Mr Phillips submitted that the word "promote" in section 4 of the Act applied only when carrying out functions under the Act. He expressed some difficulty with what he saw as the Local Authority and the responsible authorities acting in concert on the appeal and surprise that there was a suggestion that the decision to extend the licensed hours in respect of the White Horse should be revisited by the court. His objections to the conditions were on the grounds of duplication, necessity and proportionality, including the diminution of some pre-existing rights. He said it was for Leeds Licensing Authority to demonstrate that conditions were necessary and proportionate and not for Punch Taverns to prove the contrary. He directed our attention to passages of the s.182 Guidance and the existence of regulations in all areas and invited the court to consider each of the contested conditions.

Decisions

Having heard the evidence and submissions, we are satisfied that the Licensing Act 2003 provides the Licensing Authority (and the Court) with the means to impose conditions where a relevant representation is made. We support the pro-active approach of the Licensing Authority in seeking to promote the licensing objectives by preventing problems from arising as opposed to reacting to them, under existing legislation, after the event. In coming to this

conclusion, we have had regard to the s.182 Guidance and the practical approach taken by the responsible authorities who sought a dialogue in each case unsuccessfully.

The s.182 Guidance is relevant to the operation of the functions under the Act and it seeks to ensure that conditions are only imposed where necessary and to avoid duplication with other regulations.

In each of these cases we have heard explanation from the local authority witnesses as to why a condition is necessary and in what manner the condition differs from existing regulation. We are satisfied that these witnesses had given individual consideration to each premises and to each and every condition sought. We consider this is demonstrated by the modification or removal of a significant number of conditions. We also consider that this demonstrates that the responsible authorities have taken a practical approach to their duties under the Act and have altered their approach in the light of growing experience and negotiation. We were conscious that the presentation from these witnesses was made in the context of a failure to enter into dialogue by Punch Taverns, both before the initial hearing and before this hearing.

By contrast, the evidence presented on behalf of Punch Taverns failed to demonstrate that they would enter into dialogue with the relevant authorities or put into action those steps which they agree are beneficial.

We have considered at length each of the contested conditions as set out in the final list and are persuaded that the evidence in these cases leads to the inevitable conclusion that these conditions are indeed necessary to ensure that Punch Taverns meet the licensing objectives in relation to these premises.

We have also considered how the appeal should be considered in respect of the extended hours granted in respect of the White Horse. We were not persuaded that the court is in any way restricted from reconsidering the decision of the Licensing Authority, and indeed, we were invited to do so. We heard evidence from the neighbours and the environmental health officers at much greater length than the sub-committee and conclude that the appropriate decision regarding the varied hours should be to allow an additional hour until midnight on Fridays and Saturdays only and until midnight on each Sunday of a Bank Holiday weekend, Christmas Eve and Boxing Day and from 11am New Years Eve until midnight on New Years Day.

We are granting licences in respect of each premises subject to the conditions, including the re-worded conditions in italics, listed on the final 18-page list, with the sole exception of conditions 33 and 34 (relating to first aider and equipment at the Engine Inn). We are imposing the condition number 37 (relating to checking access is kept clear at the Bull's Head) even though it is already being met, because of the location and circumstances of those premises.

Mrs W M Crump
Miss S R H Jackson
Mr M Greenhalgh