

HAVANT BOROUGH COUNCIL
PUBLIC SERVICE PLAZA
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HAMPSHIRE PO9 2AX

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LICENSING SUB COMMITTEE AGENDA

Membership: Councillor Shimbart (Chairman)

Councillors Farrow and Tarrant

Meeting: Licensing Sub Committee

Date: Friday 20 June 2014

Time: 9.30 am

Venue: Tournebury Room , Public Service Plaza, Civic Centre Road,
Havant PO9 2AX

The business to be transacted is set out below:

Jo Barden-Hernandez
Service Manager – Legal & Democratic Services

12 June 2014

Contact Officer: *Tristan Fieldsend* 023 9244 6233
Email: tristan.fieldsend@havant.gov.uk

- | | Page | |
|----------|--|---------------|
| 1 | Declarations of Interests | |
| | To receive and record declarations of interests from any of the members present in respect of any of the various matters in the agenda for this meeting. | |
| 2 | Licensing Hearing | 1 - 42 |
| | The Licensing Sub-Committee is requested to determine an application for a review of a Premises Licence in respect of: | |
| | Stop and Shop, 407 Middle Park Way, Leigh Park | |

Appendices:

Report of Licensing Officer

Notice of Hearing

Application for Review

Representation from the Police

Representation from the Licence Holder

Information to Accompany Notice

Relevant Regulations Relating to Hearings

Hearings Procedure

Additional Information Supplied by Trading Standards

GENERAL INFORMATION

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Internet

This agenda and its accompanying reports can also be found on the Havant Borough Council website: www.havant.gov.uk

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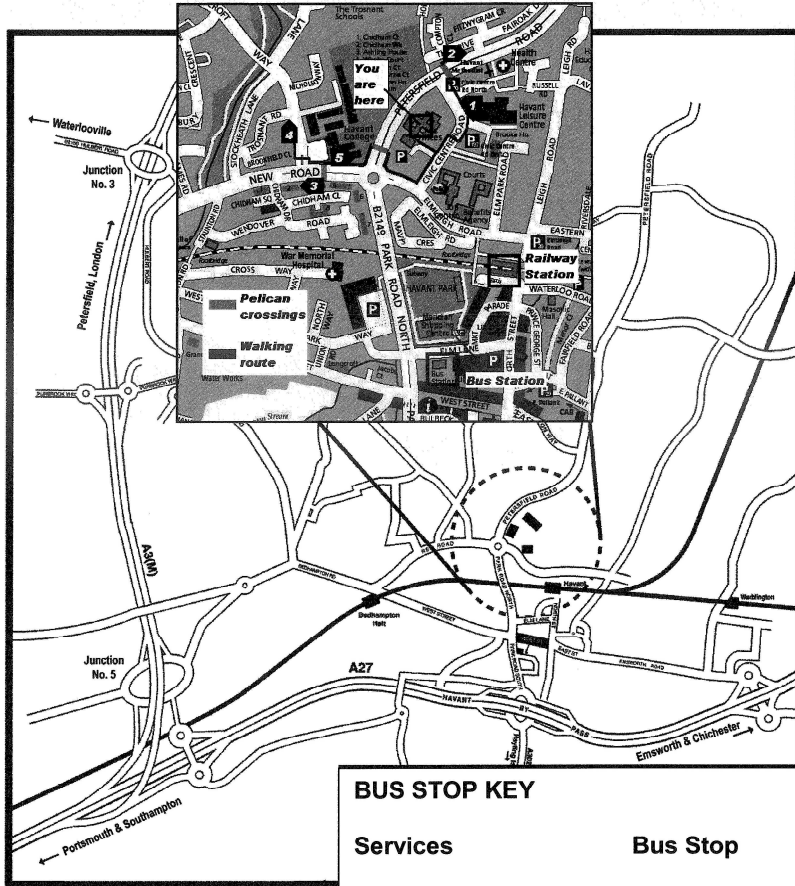
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Services	Bus Stop
20, 21, 39, 63	1
20, 21, 36**, 39	2
23, 36**	3
23, 27**, 37	4
23, 27**, 36**, 37	5

** - also stops "hail and ride" opposite Stop 1 in Civic Centre Road



Havant
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Public Service Plaza
Civic Centre Road
Havant
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Public
Service
Plaza

Review of Premises Licence for Stop and Shop 407 Middle Park Way Leigh Park

Report by the Licensing Officer

Background

This is the third request for a review of this premises licence by Trading Standards. The first review was held on the 12 April 2013 following two offences of selling alcohol to underage persons. A further review was conducted on the 29 November 2013 following a further under age sale.

The Premises Licence under the Licensing Act 2003 was originally issued to Jagdish PATEL on 12 July 2010 for Stop and Shop (formerly Kwiki Mart) 407 Middle Park Way, Leigh Park. Following the decision of the licensing sub committee review hearing on the 12 April 2013, the premises Licence was transferred to Mr PATEL'S Partner, Netra PATEL, of 126 Parkhouse Farm Way, Leigh Park, PO9 4DP.

The Designated Premises Supervisor is also Mrs Netra PATEL, who has a personal licence 08/00390/LIPERS Issued by Croydon Borough Council and valid until 01/04/2018.

The Licence is for the sale of alcohol for consumption off the premises, between the hours of 8.00am and 11.00pm Monday to Saturday, 10.00am to 10.30pm Sundays, Good Friday 8.00am to 10.30pm, and Christmas Day 12noon to 3.00pm and 7.00pm to 10.30pm.

The Licence includes the following conditions :-

Mandatory Conditions: Where licence authorises supply of alcohol

Where a premises licence authorises the supply of alcohol, the licence must include the following conditions.

- 1) The first condition is that no supply of alcohol may be made under the premises licence-
 - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- 2) The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Further Mandatory Conditions added 1 October 2010

- 1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- 2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

ANNEX 3 - CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY ON 29 NOVEMBER 2013

- 1) Any member of staff who is authorised to sell alcohol at the premises will pass the Level 2 BIIAB Award for personal licence holders course or equivalent course within 3 months of the commencement of their employment, or within such other period of time agreed by Hampshire County Council Trading Standards Department. Thereafter the member of staff will receive refresher training regarding appropriate precautions to prevent the sale of alcohol to persons under the age of 18, the signs and symptoms of drunk persons and the refusal of sale due to intoxication, every 6 months. Records of this training will be kept which should be signed and dated by the member of staff who received that training. All training records will be made available immediately upon the request of Hampshire Constabulary or any other responsible authority. Training records will be kept on the licensed premises to which they relate for a minimum period of two years.
- 2) The designated premises supervisor will pass the Level 1 BIIAB Designated Premises Supervisor course or equivalent within 3 months of their appointment as the Designated Premises Supervisor.
- 3) A written log shall be kept of all refusals of age restricted products, including refusals to sell alcohol. This log will also record the sale of alcohol where the Challenge 25 policy has been applied and the customer has then produced appropriate identification allowing the sale to conclude. The premises licence holder shall ensure that the refusals log is checked, signed and dated on a weekly basis by the designated premises supervisor. The refusal log will be kept and maintained at the premises and will be available for inspection immediately upon request by Hampshire Constabulary and any other responsible authority. Records of refusals will be retained for 12 months.
- 4) There will be a challenge 25 policy operating at the premises. Challenge 25 means that the holder of the premises licence shall ensure that every individual who visually appears to be under the age of 25 years of age and is seeking to purchase or be supplied with alcohol at the premises or from the premises, shall produce

identification proving that individual to be 18 years of age or older. Acceptable identification for the purpose of age verification will include a driving licence, passport or photograph bearing the "PASS" logo and the persons date of birth. If the person seeking alcohol is unable to produce acceptable means of identification, no sale or supply of alcohol will be made to or for that person. Challenge 25 posters shall be displayed in prominent positions at the premises.

- 5) The premises shall have sufficient cameras located within the premises to cover all public areas including the outside of the premises covering the entrance and exit.
 - i) The system will be able to cope with strobe lighting (where used) and all levels of illumination throughout the premises as well as outside areas.
 - ii) CCTV warning signs to be fitted in public places. The CCTV system must be operating at all times whilst the premises are open for licensable activity.
 - ii) All equipment shall have a constant and accurate time and date generation.
 - iv) The recording system will be able to capture a minimum of 4 frames per second and all recorded footage must be securely retained for a minimum of 28 days.
 - v) The premises licence holder must be able to demonstrate that the CCTV system has measures to prevent recordings being tampered with i.e. password protected.
 - vi) Viewable copies of CCTV footage will be supplied to the police within 24 hours of their request. Any images recovered must be in a viewable format on either disc or VHS. Footage supplied in a digital format on CD or DVD will also have a copy of the CCTV system software enabled on the disc to allow playback.
 - vii) In the event of a technical failure of the CCTV equipment the premises licence holder or designated premises supervisor must report the failure to the police licensing unit within 24 hours.

This Review Application

An application for a Review of the Premises Licence was made by the Hampshire Trading Standards on 25 March 2014. Details of the review were served on Mrs PATEL (The Premises Licence Holder) and all the Responsible Authorities at the same time, and Notices were displayed on the Premises and at Havant Borough Council Offices and website for the regulatory 28 days.

A further representation has been made by PC Barron, Hampshire Constabulary . (Police Licensing Officer for the Havant district). His representation is based upon the same facts as those of the Trading Standards Officers and he is fully supportive of their aims in this case.

A representation in favour of the Premises owners has also been received from Mr Richard HUDSON (Licensing Consultant)who is acting on their behalf. The summary of his representation is that since the review hearing in April 2013 Mrs Patel has fully complied with and implemented all of the conditions imposed upon the licence at that hearing. And that by complying with all the instructions, conditions and the work that she and her husband have carried out, that they have exercised all due diligence in attempting to prevent sales to persons under 18 years of age.

Circumstances leading to Review

This is the third application by Hampshire County Council Trading Standards for a review of the premises licence for Stop and Shop in 2013.

Both of the previous review applications refer to alcohol test purchase failures at the shop.

Recent History at Stop and Shop

30/10/12 Police Test Purchase failure

21/12/12 Trading Standards Test Purchase failure

03/04/13 to 10/04/13 a 7 day closure order was implemented

22/02/13 Trading Standards applied for a review of the premises licence

12/04/13 Review Hearing

During this hearing trading standards expressed concerns over this premises and agreed that a voluntary closure and a voluntary suspension of the premises licence was acceptable due to the severity of the failures.

Trading Standards also stated at the hearing that this premises was living on the edge and could not afford another failure. The next time there was to be a failure trading standards would ask the licensing committee to revoke the premises licence.

18/07/13 Trading Standards conducted an alcohol test purchase on the premises and our volunteer was refused the sale of alcohol. This was the first test after the review and was deliberately delayed to allow for training to take place and to check that the conditions and training were working.

04/09/13 Trading Standards conducted an alcohol test purchase whereby a 16 year old female volunteer was sold 4 cans of Strongbow.

29/11/13 A request for a Review was made by trading standards and the Licensing committee heard the application. On this occasion they decided that

it was not necessary to take any formal action against the Premises Licence holder.

20/02/14 A further test purchase was carried out at the shop and again a volunteer under the age of 18yrs was sold alcohol. The member of staff was issued a Penalty Notice for disorder for the offence of selling alcohol to a person under 18 years and has since been dismissed from employment at the shop.

Conclusion

Trading Standards feel that this latest failure is indicative of a general failure by the Premises Licence holder to manage the sale of alcohol and feel that they have no option but to request the committee considers revocation of the premises licence.

Responsible authorities when applying for reviews have to apply one or more of the four licensing objectives, in this case the protection of children from harm in trying to prevent children from purchasing alcohol and also the crime and disorder objective, a criminal offence has occurred when alcohol was sold to a child.

All staff have received additional training to a higher level than most other store assistants in the area, the shop has had new and stringent conditions imposed on the premises licence after the first hearing and still failed a test purchase. The owners Mr and Mrs Patel have complied with all the conditions on their licence and yet there was still a failure. New conditions, additional training and mandatory and voluntary suspensions of the licence appear not to have worked.

The Sub-Committee has the authority to take the following steps:

1. Modify the Licence
2. Exclude a Licensable activity from the scope of the licence
3. Remove the designated premises supervisor
4. Suspend the licence for a period not exceeding 3 months
5. Revoke the licence.

The sub committee is requested to determine the application when they have heard from all parties.

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LICENSING ACT 2003 – SECTION 52(2)
APPLICATION FOR A REVIEW OF A PREMISES LICENCE
Stop and Shop, 407 Middle Park Way, Havant, PO9 5DP

NOTICE

To: Applicant: Hampshire Trading Standards Service, Montgomery House, Monarch Way, Winchester, SO22 5PW

Licence Holder: Mrs Neta Patel, 126 - 128 Park House Farm Way, Leigh Park, Havant PO9 4DP

Licence Holder's Agent: Mr D Hudson
Licensing Consultant
87 Richmond Road
Poole, Dorset
BH14 0BU

Persons Who Have Made Relevant Representations:

PC 1148 Phil Barron, Hampshire Constabulary, Licensing Department, Havant Police Station, Civic Centre Road, Havant PO9 2AN

Mr D Hudson, Licensing Consultant, 87 Richmond Road, Poole, Dorset, BH14 0BU

I HEREBY GIVE NOTICE that a hearing under Section 52(2) of the Licensing Act 2003 to determine an application made by Hampshire Trading Standards Service of Montgomery House, Monarch Way, Winchester, SO22 5PW, for a review of a premises licence in respect of premises known as Stop and Shop, 407 Middle Park Way, Havant, will be held by the Council's Licensing Sub-Committee in the Council Chamber at Havant Borough Council, Public Service Plaza, Civic Centre Road, Havant in Hampshire at 9.30am on Friday 20 June 2014.

Dated this 28 day of April 2014

Signed

Solicitor to the Council

Enclosures

Information to Accompany a Notice of Hearing

Hearings Procedure

Relevant Regulations Relating to Hearings

Notice of Intention

Representations:

- a) Application for review
- b) Representation received from the Licence Holder's Agent
- c) Representation received from the police

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

We Hampshire County Council Trading Standards Service wish to apply for a review of a Premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below.

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Stop and Shop 407 Middle Park Way	
Post town Havant	Post code PO9 5DP

Name of premises licence holder or club holding club premises certificate (if known) Mrs Neta Patel

Number of premises licence or club premises certificate (if known)

Part 2 - Applicant details

I am

- | | Please <input checked="" type="checkbox"/> yes |
|---|--|
| 1. An interested party (please complete (A) or (B) below) | <input type="checkbox"/> |
| a) A person living in the vicinity of the premises | <input type="checkbox"/> |
| b) A body representing persons living in the vicinity of the premises | <input type="checkbox"/> |
| c) A person involved in business in the vicinity of the premises | <input type="checkbox"/> |
| d) A body representing persons involved in business in the vicinity of the premises | <input type="checkbox"/> |
| 2. a responsible authority (please complete (C) below) | <input checked="" type="checkbox"/> |
| 3. a member of the club to which this application relates (please complete (A) below) | <input type="checkbox"/> |

(A) DETAILS OF INDIVIDUAL APPLICANTS (fill in as applicable)

Mr Mrs Miss Ms Other title (for example Rev)

Surname

First names

Please tick yes

I am 18 years old or over

Current address

Post Town Postcode

Daytime contact telephone number

Email address
(optional)

(B) DETAILS OF OTHER APPLICANT

Name and address
Telephone number (if any)
Email (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Hampshire County Council Trading Standards Service Montgomery House Monarch Way Winchester Hampshire SO22 5PW
Telephone number (if any) 01962 833658
Email (optional) stephen.lawford@hants.gov.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

✓

- | | |
|---|---|
| 1) the prevention of crime and disorder | ✓ |
| 2) public safety | |
| 3) the prevention of public nuisance | |
| 4) the protection of children from harm | ✓ |

Please state the ground(s) for review (please read guidance note 1)

Hampshire County Council Trading Standards Service wish to apply for a review for this premises under the licensing objectives :- The Prevention of Crime and Disorder and The Protection of Children from Harm.

In a 16 month period Stop and Shop have failed 4 alcohol test purchases.

Please provide as much information as possible to support the application (please read guidance note 2)

30/10/12 – test purchase failure

21/12/12 – test purchase failure

03/04/13 - 7 day closure order was implemented

12/04/13 - Review Hearing

18/07/13 - test purchase refusal to sale

04/09/13 - test purchase failure

29/11/13 - Review Hearing

20/02/14 - test purchase failure

We highlight paragraphs 11.26, 11.27 and 11.28 of the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003.

11.26 Where the licensing authority is conducting a review on the ground that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licensee and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any necessary steps to remedy the problems. 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.

11.27 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:

- 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.

11.28 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be

seriously considered. We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

At the Review hearing on 12/04/13 the premise licence was suspended for four weeks and conditions were imposed including, staff to be trained to BIIAB APLH standard. Three members of staff were trained to that standard but they have now all left the business and the staff that are left have not been trained to that standard. It is clear that this condition has not worked.

Hampshire County Council is responsible for the health and wellbeing of Hampshire residents, particularly the vulnerable such as children and it is vital that we do everything we can to protect children from the dangers of alcohol.

This store continues to sell alcohol to children by failing test purchase operations, indeed the store has failed four times from five tests in a sixteen month period. An appalling record.

Trading Standards believe the store has a complete disregard for the licensing objectives and to protect the health of Hampshire's most vulnerable residents, Trading Standards invite the licensing sub-committee to revoke this premise licence.

Trading Standards feel that revocation is an entirely appropriate and proportionate action to take. No other premise in Hampshire had ever been brought to review twice by Trading Standards before, this is now the third Review.

Please tick ✓ yes

Have you made an application for review relating to these premises before?

Day Month

Year

If yes, please state the date of that application

2	2	0	2	2	0	1	3	+
1	8	1	0	2	0	1	3	

If you have made representations before relating to this premises, please state what they were and when you made them

NO

Please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities ✓
and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application ✓
will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant’s solicitor or other duly authorised agent.
(please read guidance note 4) **If signing on behalf of the applicant, please state in what capacity.**

Signature.....

S. Lawford.....

Date.....
25/03/14.....Capacity.....
Trading Standards Officer.....

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 5)
--

Post town	Post code
------------------	------------------

Telephone number (if any)

If you would prefer us to correspond with you using email, your email address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details, for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

DATA PROTECTION ACT 1998

The personal information you have provided, or which has been obtained from other sources, will only be used for the purpose of the licensing function, and for auditing, monitoring, statistical and other research.

The information will be retained by the council for a period not exceeding 7 years.

The information may be shared with other council departments and statutory bodies.

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**Application for the review of / Representation in respect of a
Premises licence or Club Premises certificate
under the Licensing Act 2003**

Page 1 of 4

Before completing this form, please refer to FPP 07001 (Licensing (Licensing Act 2003))

I PC 1148 Phil BARRON, on behalf of the Chief Officer of Hampshire Constabulary,
(Insert name of applicant)

- Apply for the review of a premises licence.
 Apply for the review of a club premises certificate.
 (Select as applicable)

Make a representation about a premises licence/club premises certificate

Premises or Club Premises details

Postal address of premises:	Stop and Shop 407 Middle Park Way Havant
Postcode (if known):	PO9 5DP

Name of premises licence holder or club holding club premises certificate (if known) Mr Jagdish PATEL
--

Number of premises licence or club premises certificate (if known) HPR0198

Details of responsible authority applicant

Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other title / Rank: PC 1148 Licensing Officer
Surname: BARRON First Names: Phil
Current postal address : Licensing Department Havant Police Station Civic Centre Road Havant
Postcode: PO9 2AN
Daytime telephone number: 02392 891535
E-mail address: phil.barron@hampshire.pnn.police.uk (optional)

Hampshire Constabulary is a responsible authority and the applicant has the delegated authority of the Chief Officer of Police in respect of his responsibilities under the Licensing Act 2003

**Application for the review of / Representation in respect of a
Premises licence or Club Premises certificate
under the Licensing Act 2003**

Page 2 of 4

This application to review relates to the following licensing objective(s)

*Select one or more
boxes*

- | | |
|---|-------------------------------------|
| 1) The prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) Public safety | <input type="checkbox"/> |
| 3) The prevention of public nuisance | <input type="checkbox"/> |
| 4) The protection of children from harm | <input checked="" type="checkbox"/> |

Please state the grounds for review which must be based on one or more of the licensing objectives together with supporting information:

Hampshire Constabulary wish to make representation in support of Hampshire Trading standards review of the above premises in relation to the following licensing objectives, the prevention of crime and disorder and the protection of children from harm.

Evidence suggest across Havant Borough the majority of ASB incidents, criminal damage and minor assault are committed by juveniles. Those stop checked in the early evenings on Fri / Sat, a high proportion are in drink and some in possession of alcohol, which may have been purchased by proxy sale or by the individual. Since October 2012 Havant Police Licensing department have carried out extensive alcohol test purchase operations across the district.

The present Premises licence holder is Mr Jagdish PATEL.

The premises has failed the following test purchase operations carried out by the Police and HC Trading Standards.

30/10/12 – test purchase failure

21/12/12 – test purchase failure

03/04/13 - 7 day closure order was implemented

12/04/13 - Review Hearing

18/07/13 - test purchase refusal to sale

04/09/13 - test purchase failure

29/11/13 - Review Hearing

20/02/14 - test purchase failure

**Application for the review of / Representation in respect of a
Premises licence or Club Premises certificate
under the Licensing Act 2003**

Signature of Authorising Officer (Inspector or above)

Name	<u>Insp PAGE</u>	Collar Number:	<u>1479</u>
Signature:	_____	Date:	<u>22/4/2014</u>

Representations on behalf of the holder of the Premises Licence following an application to review the Premises Licence in respect of Stop and Shop, 407 Middle Park Way, Havant PO9 5DP

Mr and Mrs Patel would like to apologise to the Licensing Committee and Responsible Authorities that it has been necessary for the Trading Standards Authority to apply for the review of the Premises Licence in respect of Stop and Shop, 407 Middle Park Way, Havant PO9 5DP. Mr and Mrs Patel are very disappointed and concerned that despite the considerable efforts that they have made to comply with the Licensing Objectives in the past eighteen months or so at these premises, they find themselves the subject of a review of the Premises Licence.

They have made considerable efforts to train their staff in their responsibilities in respect of the sales of Alcohol, especially to those potential customers who are not old enough to be able to buy alcohol. They have also made investments in the business in the form of CCTV and upgrades to the till to support their staff in carrying out their duties in compliance with the Licensing Objectives. They fully understand that they are in a very serious position as far as the future of the Premises Licence for Stop and Shop is concerned.

They wish to emphasise to the Licensing Committee that despite appearances to the contrary from the information and details contained within the review application, that they share the common aim of all in upholding the Licensing Objectives, especially in relation to the prevention of crime and disorder and the protection of children from harm, which are the Licensing Objectives specified in this review. They are not ignoring the requirements of the Licensing Act 2003 and the Licensing Objectives that underpin the Act and have tried to ensure that the shop operates in compliance with the legal requirements.

They have owned this small shop for a number of years and know the vast majority of their customers. They have a good knowledge of the young people in the area and the associated issues and potential problems with young people obtaining alcohol.

Mrs and Mrs Patel will expand on the issues raised above at the hearing with my assistance and will seek to explain the actions they have taken and the problems that they have encountered to the Licensing Sub-Committee. They will explain the steps they have taken to comply with the Licensing Objectives in the past and how they intend to comply with the Licensing Objectives in the future.



Dick Hudson – Licensing Consultant and authorised representative for Mr and Mrs Patel

22nd April 2014

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LICENSING SUB-COMMITTEE

Information to accompany a Notice of Hearing

Notes:

The purpose of this guide is to advise you of the work and responsibilities of the Licensing Sub-Committee.

The purpose of the hearing is for the Sub-Committee to consider the application laid before it under the Licensing Act 2003, in the light of any representations received before or at the meeting, including those of the applicant or his representative.

The meeting is open to the public and the press. An interested party or responsible authority may attend and may be assisted or represented by any person whether or not that person is legally qualified. However, the Sub-Committee may exclude the public, including any party to the hearing, from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing (or part hearing) taking place in public.

The hearing procedure and relevant extracts from the Regulations relating to hearings are attached.

If you have notified the Council that you do not intend to attend the hearing or to be represented at the hearing, you should be aware that the hearing may proceed in your absence.

However, if you have not indicated such an intention to the Council and you then fail to attend or be represented at the hearing, the Sub-Committee may:

- adjourn the hearing to a specified date, if considered necessary in the public interest or
- hold the hearing in your absence.

Where a hearing is held in your absence, the Sub-Committee shall consider the application, plus any written representations you have made. Where the Sub-Committee adjourns the hearing to a specified date, all parties to the hearing will be notified of the date, time and place to which the hearing has been adjourned.

The Sub-Committee may require any person attending the hearing, who in its opinion is behaving in a disruptive manner, to leave the hearing forthwith and may:

- refuse to permit that person to return, or
- permit the person to return only on such conditions as the Sub-Committee may specify,

but such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

Please note, that the Council may dispense with holding a hearing if all persons involved, i.e. the applicant, interested parties and responsible authorities, agree that such a hearing is unnecessary, by giving notice to the Council that they consider a hearing to be unnecessary.

Particular Points On Which the Council Considers it Will Want Clarification at the Hearing

None save those raised in the representations received.

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Copy of Regulations 15 and 16 of The Licensing Act 2003 (Hearings) Regulations 2005

Right of attendance, assistance and representation

15. Subject to regulations 14(2) and 25, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.

Representations and supporting information

16. At the hearing a party shall be entitled to—
- (a) in response to a point upon which the authority has given notice to a party that it will want clarification under regulation 7(1)(d), give further information in support of their application, representations or notice (as applicable),
 - (b) if given permission by the authority, question any other party; and
 - (c) address the authority.

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HAVANT BOROUGH COUNCIL

HEARINGS PROCEDURE REVIEW OF PREMISES LICENCE

(in accordance with Regulations issued under the Licensing Act 2003)

- 1 The Chairman will explain to all those present how the hearing will be conducted. The parties to the hearing will be told it will be in accordance with this procedure, which will have been circulated to all parties in advance of the hearing.
- 2 Before the hearing commences the Chairman will:
 - (a) explain that a record will be taken of the proceedings in a permanent and intelligible form;
 - (b) ask all parties to the hearing if any of them wishes to withdraw any representations they have made;
 - (c) ask all parties to the hearing if any of them wishes to call witnesses and will seek the Sub-Committee's approval for witnesses to address the hearing.
- 3 The Licensing Officer will outline the nature of the application for a review of the premises licence and the reasons why the matter is before the Sub-Committee;
- 4 The Members, the Trading Standards Officers, the Police, the Licence Holder and any other persons who have made representations (or their respective representatives) may ask questions of the Licensing Officer;
- 5 The Trading Standards Officers, will be invited to submit representations to the Sub-Committee and call witnesses in support of their application for a review of the premises licence;
- 6 The Members, the Police, the Licence Holder and any other persons who have made representations, will be invited to ask questions of the Trading Standards Officers and/or their witnesses;
- 7 The Police will be invited to make representations to the Sub-Committee;
- 8 The Members, the Trading Standards Officers, the Licence Holder and any other persons who have made representations will be invited to ask questions of the Police and/or their witnesses;

- 9 Other persons who have made representations will be invited to submit their representations to the Sub-Committee;
- 10 The Members, the Trading Standards Officers, the Police and the Licence Holder will be invited to ask questions of those other persons who have made representations and/or their witnesses;
- 11 The Licence Holder, will be invited to submit representations to the Sub-Committee and call witnesses in support of their representations;
- 12 The Members, the Trading Standards Officers, the Police and any other persons who have made representations will be invited to ask questions of the Licence Holder and/or their witnesses;
- 13 The Trading Standards Officers will be given an opportunity to submit any final comments to the Sub-Committee;
- 14 The Police will be given an opportunity to submit any final comments to the Sub-Committee;
- 15 Other persons who have made representations will be given an opportunity to submit any final comments to the Sub-Committee;
- 16 The Licence Holder will be given an opportunity to submit any final comments to the Sub-Committee;
- 17 The Chairman will announce that the Sub-Committee will retire to consider its determination. The Sub-Committee, in retiring, will be accompanied by the Council's Solicitor, for legal advice only, and the Democratic Services Officer;
- 18 If at any time before making its determination, the Sub-Committee wishes to ask any additional questions of any of the parties, it will return to the Committee Room to ask those questions in front of all parties to the hearing. At this stage, the Chairman will allow further questions by any of the parties of those additional questions, if this is deemed necessary;
- 19 After any further retirement, the Sub-Committee will return to the Committee Room and the Democratic Services Officer will announce the decision of the Sub-Committee, together with the reasons for that decision.

**R (on the application of Carmarthenshire County Council)
v Llanelli Magistrates' Court**

*Licensing – Licence – Premises licence – Review – Local authority revoking interested party's premises licence following review of same – Magistrates' court allowing appeal against revocation decision and ordering authority to pay interested party's costs – Whether costs order undermined by errors made in respect of ruling on revocation issue – Whether declaration to be made – [Licensing Act 2003, ss 4, 51, 52](#)
[2009] EWHC 3016 (Admin), CO/5226/2009, (DAR Transcript: Wordwave International Ltd (A Merrill Communications Company))*

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**QBD, ADMINISTRATIVE COURT
SILBER J**

6 OCTOBER 2009

6 OCTOBER 2009

G Walters for the Claimant
The Defendant did not appear and was not represented
None stated at original source

SILBER J:

[1] Camarthenshire County Council ("the Council") seeks in these proceedings to challenge a decision made by the Llanelli Magistrates' Court ("the Magistrates") on 30 March 2009, by which it allowed the appeal of Mr Hugh Williams ("the interested party") against the Council's decision revoking his licence to sell alcoholic drinks at premises known as the Class-of-Wine, 1 Colbrook, Pontyberem, Llanelli ("the premises"). The Council was also ordered by the Magistrates to pay the interested party's costs in the sum of £3,850. The Council also seeks an order quashing this costs decision in this application. It is brought with the leave of HHJ Curran QC, sitting as a judge of the Administrative Court.

[2] Although the Council challenges the decision allowing the appeal of the Interested Party, it does not seek an order revoking the licence of the Interested Party. Nevertheless, it is necessary for me to consider that decision, because it is relevant on the challenge to the costs decision, and also to the further relief which the Council seeks, which is for a declaration that, on an appeal from a decision of a Council in relation to a review of premises licence under the [Licensing Act 2003](#) ("the 2003 Act"), the Magistrates should take such steps as they consider necessary for the promotion of the licensing objectives which are set out in s 4(2) of the 2003 Act.

[3] The background to this application is that it was alleged that alcohol was sold at the premises to three different customers aged 15 years in a trading

standards test, and that these sales took place on 7 August 2008, 13 August 2008 and 20 August 2008. The Interested Party was notified that, for those reasons, the Council wished to review his licence pursuant to the provisions of s 51 of the 2003 Act. Under s 52 of the 2003 Act, the Council was entitled on such review to take a number of steps that it considered necessary for the promotion of "the licensing objectives". Those steps included modifying the conditions of the licence and revoking it, as set out in s 52(4) of the 2003 Act.

[4] The licensing objectives are of fundamental importance in resolving this application. They are set out in s 4(2) of the 2003 Act, which, provides insofar as is relevant to this case that:

"The licensing objectives are –

(a) the prevention of crime and disorder;

. . .

(d) the prevention of children from harm."

It is of critical importance in deciding this appeal that s 146(1) of the 2003 Act provides that "A person commits an offence if he sells alcohol to an individual aged under 18."

[5] On 18 December 2008, the Council sub-committee considered at an oral hearing the application to review the Interested Party's licence. It found that the premises' licence holder or the designated premises supervisor personally sold the alcohol on two of the three occasions to persons under the age of 18. The police and Children's Services of the local authority supported the application, which had been made by the Trading Standards Authority, to review the premises licence granted to the interested party. The Licensing Committee of the Council attached importance to the fact that the application to review the interested party's licence had been made by those bodies, which fall within the definition of "a responsible authority", and it had been supported by two other responsible authorities. The effect of being a responsible authority is that by s 52(2) of the 2003 Act, the Council was obliged to have regard to their representations.

[6] The Council found that "On the balance of probabilities, the committee is satisfied that the current operation of the premises is not promoting the licensing objectives of protecting children from harm." The committee proceeded to consider what course of action was necessary and proportionate, and it concluded that ". . . revocation of the licence is necessary in this case, and a proportionate response to what has happened".

[7] As I have indicated, the Magistrates allowed the appeal of the interested party. This judicial review application is brought on the basis that the Magistrates first failed to apply the proper law or principles by omitting to consider the legislative objective properly or at all, and second that it also failed to exercise its discretion in relation to costs in a proper and responsible manner. The Magistrates submitted an Acknowledgment of Service, stating that they did not intend to make any submissions other than including a note of the proceedings in which there was an explanation of its decision-making process. The Interested Party has neither been present nor represented, but it made written representations through its solicitor in a letter dated 8 May 2009, in which it contended that the decision of the Magistrates should be upheld.

[8] Before dealing with the Council's submissions, it is appropriate to summarise the reasoning of the Magistrates, which was, first, that the test which they would apply was whether the revocation was "necessary and proportionate in the circumstances of the case". The Magistrates, in answering that question, found first that the Interested Party had been the proprietor of the premises for 19 years and second that he enjoyed a clean and unblemished record prior to the date of the test purchases. The Magistrates also attached importance to the fact that PC Melly had given evidence that there was no link between the premises and the commission of any crime and disorder in the village of Pontyberem.

[9] The Magistrates also considered that the Interested Party was ". . . properly implementing the law. We also note their many letters of support for Mr Williams." The conclusion of the Magistrates was that:

"We will therefore allow the appeal . . .

In coming to this decision we had regard to the Secretary of State's guidance under [section 182](#) of the Licensing Act 2003."

The Magistrates also explained that:

"The selling of prohibited goods to children is clearly a matter which has to be taken seriously and we view it in this light and therefore have no criticism of the Local Authority's decision to conduct the test purchases and bringing the matter before the subcommittee."

[10] The main ground of challenge relied on by Mr Graham Walters, counsel for the Council, is that the Magistrates failed to apply the statutory test in the licensing in s 52 of the 2003 Act, which provides that:

"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."

[11] In my view, the decision of the Magistrates was wrong, for the following overlapping reasons. First, they adopted the wrong test of considering whether the revocation of the Interested Party was necessary and proportionate, which thereby disregarded attaching any weight to the licensing objectives in the statutory obligations in the 2003 Act. Second, the Magistrates erred, as they did not expressly or impliedly consider the licensing objective of "prevention of children from harm" or the prevention of crime and disorder contained in the 2003 Act and the guidance under it.

[12] By acting this way, the Magistrates were ignoring their duty under s 4(3) of the 2003 Act, which provides:

"In carrying out its licensing functions, a licensing authority must also have regard to –

. . .

(b) any guidance issued by the Secretary of State under section 182."

[13] Guidance was indeed issued under s 182 of the 2003 Act. The approach which should be taken to the Guidance is set out in para 2.3 of the guidance, 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."

It is noteworthy that para 5.99 of the Guidance states that:

"The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems 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 licences by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises."

By para 1.115 of the Guidance, the question of the sale of alcohol on the premises for underage drinkers is considered, where it is stated that:

"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:

. . .

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."

[14] In my view, the Magistrates were obliged to consider the sale of alcohol to minors "particularly seriously", as stated in the Guidance. Unfortunately, they did not do so, because they failed to consider with care, in its review of the license, whether its decision was consistent with the objective, and in particular the impact on the health, educational attainment, employment prospects and propensity for crime of young people. This was particularly relevant in this case, as the Interested Party committed an offence on three occasions by selling alcohol to youths who were three years under the age of 18. There is nothing in the reasoning of the Magistrates to show that they considered these matters at all.

[15] The significance of the guidance has been stressed repeatedly by this court. In *R (Donald Thwaites plc) v Wirral Borough Magistrates Court* [2008] EWHC 838 (Admin), [2009] 1 All ER 239, 172 JP 301, Black J said at para 38:

"What a . . . Magistrates' Court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight . . . when a Magistrates' Court is entitled to depart from the Guidance and justifiably does so, it must . . . give proper reasons for so doing . . . the magistrates did not need to work slavishly through the Guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the Guidance if they considered it proper so to do."

[16] In *R (Bassetlaw District Council) v Worksop Magistrates Court* [2008] EWHC 3530 (Admin), 173 JP 599, Slade J said at para 37 that:

"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 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."

This case is a stronger case, because in this case it is that the Magistrates not merely did not follow the Guidance, but they did not even refer to it at all.

[17] A third reason why the Magistrates erred is that they failed to consider the harm caused by the sale of alcohol to these 15 year-old youths. This was, after all, the basis on which the Council revoked the application, but instead the only matter which seemed of importance to the Magistrates was the absence of any connection between the premises and the commission of a crime in the village of Pontyberem. As I have already stressed, the Magistrates had to consider further matters other than the commission of a

crime in relation to the effect of selling alcohol to under-age youths, such as the effect on other aspects of their life.

[18] The fourth objection to the approach of the Magistrates is that they did not deal properly with the objections from three responsible authorities to the continuance of the interested party's license. They were, as I have explained, the Trading Standards Authority, the Police and the Children's Services. I have already referred to the statutory provisions, which show that the Magistrates were obliged to consider them. These matters were not considered at all by the Magistrates, notwithstanding that each of those three organisations was a responsible authority which had made representations.

[19] It is well settled in this court that the Magistrates and the Council were obliged to attach some weight to it. In the case of *Donald Thwaites* (supra) it was held at para 63 that weight had to be attached by the decision-makers to the views of the police. In my view, similar reasoning applies to the views of the trading standards, and the children's department. It is noteworthy as well that para 2.1 of the Guidance states that the licensing authority should ". . . look to the police as a main source of advice on crime and disorder".

[20] Furthermore, para 2.51 of the Guidance states that an authority should expect to maintain close contact with the police, young offenders' teams and trading standards officers regarding unlawful sales and consumption of alcohol by minors and the development of control strategies. Paragraph 5.103 of the Guidance points out that:

"It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims."

Unfortunately, the Magistrates failed to comply with those requirements.

[21] Finally, the reasoning of the Magistrates shows that they regarded as definitive in this case the absence of any link between the premises and the commission of crime and disorder, as well as the fact that steps had been taken by the Interested Party to ensure no sales were made in the future to underage youths. This shows a misunderstanding of the legislative objectives.

[22] For all those reasons, I have concluded that the decision of the Magistrates was flawed. It has not been suggested that I should, therefore, revoke the license of the Interested Party, and I do not do so. I do however make the declaration which has been sought. In my view, it would serve a useful purpose, as it would explain to these Magistrates and other bodies the approach which they should adopt. The effect of my disagreement with the approach of the Magistrates is it undermines their decision to order the Council to pay the costs of the interested party. The reasoning of the Magistrates was that "With regard to costs, given the sub-committee decision to revoke the license was unreasonable in all the circumstances and therefore unsound. We award the full costs as requested."

[23] It will be quite apparent from what I have just said that I am unable to accept that approach, and for that reason the order for costs must be quashed.

Judgment accordingly.

Neutral Citation Number: [2008] EWHC 3530 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2A 2LL

Friday, 7th November 2008

B e f o r e:

MRS JUSTICE SLADE

Between:

**THE QUEEN ON THE APPLICATION OF BASSETLAW DISTRICT
COUNCIL**

Claimant

v

WORKSOP MAGISTRATES COURT

Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited

A Merrill Communications Company

190 Fleet Street London EC4A 2AG

Tel No: 020 7404 1400 Fax No: 020 7831 8838

(Official Shorthand Writers to the Court)

MR J QUIRKE appeared on behalf of the **Claimant**

The **Defendant** did not appear in person and was not represented

J U D G M E N T

1. 1.1. MRS JUSTICE SLADE: Bassetlaw District Council applies for judicial review of the judgment and decision of a district judge allowing an appeal from decisions made on a 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 10th 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 one 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. 2.1. 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. 3.1. 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. 4.1. 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 license. 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. 5.1. 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. 6.1. 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 in page 2, paragraph 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 section 182 of the Licensing Act 2003 in that he did not state that he was 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. 7.1. Fourthly, it is said that the district judge failed properly to apply and have regard to paragraph 5.115 of the guidance given under section 182 of the Licensing Act. This sets out and categorises as criminal certain activities which may arise in connection with licence premises and which the Secretary of State considers should be treated particularly seriously. Included in the use of licence 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 licence premises, it is said that the district judge failed to take into account paragraph 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. 8.1. 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*

which the judge himself referred to at page 2 of his judgment, paragraph 5. In Joffe it was said that although on an appeal, such as this, there is a right to a rehearing. 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. 9.1. Discussion.

10. 10.1. I will briefly outline some of the relevant statutory provisions and guidance. Pursuant to the Licensing Act 2003, section 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. 11.1. Importantly, section 4(3) provides:

"In carrying out its licensing functions, a licensing authority must also have regard to...

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

12. 12.1. Section 52 of the 2003 Act applies where an application for a review of licence under section 51 has been made. Subsection 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. 13.1. Those objects are set out in section 4.

14. 14.1. Subsection 52(4) provides that the steps are:

"(a) to modify the conditions of the licence ...

"(d) to suspend the licence for the period not exceeding three months.

"(e) 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. 15.1. It is to be noted that section 146(1) of the 2003 Act provides:

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

16. 16.1. Pursuant to section 182 of the 2003 Act 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 paragraph 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 paragraph 2.3 to section 4 of the 2003 Act 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. 17.1. 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. 18.1. 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 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. 19.1. The provisions relating to the power of the licensing authorities in conducting a review are set out in paragraph 5.107 and following. 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. 20.1. At 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 three months.

21. 21.1. 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. 22.1. 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. 23.1. 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. 24.1. 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 paragraph 5.115 such activity is expressly referred to in the following terms:

"There is certain criminal activity that may arise in connection with licence 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."

25. 25.1. Of importance to the consideration of the case before me is also paragraph 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. 26.1. 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. 27.1. At paragraph 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. 28.1. 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. 29.1. At paragraphs 4 and 5 of the judgment in the section headed, "Discussions", at page 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 10th 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."

30. 30.1. In my judgment, the language of paragraph 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.

Whilst 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 paragraph 5 being the appropriate one to follow.

Indeed, paragraph 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. 31.1. However, in my judgment was not borne in mind by 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 paragraph 5.113. For reasons given earlier, and in particular by reason of the fact that paragraph 5.115 clearly specifies criminal activity which may arise in connection with the use of the licence premises for the purchase and consumption of alcohol by minors, that provision is engaged in this case.

32. 32.1. 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. 33.1. 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 paragraph 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.

34. 34.1. 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. 35.1. 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 the Stepney Borough Council v Joffe case which he set out at page 2, paragraph 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. 36.1. It is finally said that the district judge erred in that he departed from the guidance issued under section 182 of the Licensing Act 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 paragraphs 5.113, 5.115 and 5.116.

37. 37.1. 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 licence 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 page 10 of his judgment, paragraph 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. 38.1. 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.

Yes, Mr Quirke.

39. 39.1. MR QUIRKE: I do not think there is any need to formulate a declaration, I think your judgment, in effect, will do the declaration required and the guidance required.

40. 40.1. I am instructed to apply for costs.

41. 41.1. MRS JUSTICE SLADE: Yes.

42. 42.1. MR QUIRKE: It is a tricky one.

43. 43.1. MRS JUSTICE SLADE: It is rather. Can you help me a bit on this?

44. 44.1. MR QUIRKE: Well, ordinarily the usual rules as to the cost apply. If somebody does not turn up, and for example if it is case stated and the magistrates do not attend at court, the court does not usually make an order for costs, but this is a sort of half way house, where the submissions have been made, although nobody has turned up to make them.

45. 45.1. MRS JUSTICE SLADE: Yes. Who would you want your costs from?

46. 46.1. MR QUIRKE: The Magistrates' Court.

47. 47.1. MRS JUSTICE SLADE: Mr Quirke, as you say, there are certain approaches which may normally be adopted but they are within my discretion. In the circumstances, where one would hope that the Magistrates' courts hearing such cases in the future will adhere to the judgment on matters which may not have been apparent to the district judge when coming to his decision and the subsequent order; since he was exercising his judicial function and there is no suggestion of impropriety or anything of that sort, I will not make an order for costs.

48. 48.1. MR QUIRKE: I am grateful.

49. 49.1. MRS JUSTICE SLADE: Thank you.

50. 50.1. I would ask you, Mr Quirke, to draw up the order.
51. 51.1. Thank you for your assistance.

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