

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

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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 possible 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.