



## **Licensing Sub Committee Hearing Panel**

Date: Tuesday, 29 March 2022

Time: 10.00 am

Venue: Council Chamber, Level 2, Town Hall Extension

This is a **supplementary agenda** containing additional information about the business of the meeting that was not available when the agenda was published

### **Access to the Council Chamber**

Public access to the Council Chamber is on Level 2 of the Town Hall Extension, using the lift or stairs in the lobby of the Mount Street entrance to the Extension.

**There is no public access from any other entrance of the Extension.**

## **Membership of the Licensing Sub Committee Hearing Panel**

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**Councillors** - Andrews, Hassan and Hughes

## Supplementary Agenda

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- 1a Urgent Business - Application for a Premises Licence Variation - Manchester Mini Market, 16 Oldham Street, Manchester, M1 1JQ** 3 - 98
- The report of the Director of Planning, Building Control and Licensing is enclosed.

## Further Information

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For help, advice and information about this meeting please contact the Committee Officer:

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Tel: 0161 234 3043  
Email: [ian.hinton-smith@manchester.gov.uk](mailto:ian.hinton-smith@manchester.gov.uk)

This supplementary agenda was issued on **Monday, 21 March 2022** by the Governance and Scrutiny Support Unit, Manchester City Council, Level 2, Town Hall Extension (Library Walk Elevation), Manchester M60 2LA

## Manchester City Council

### Report for Resolution

**Report to:** Licensing Subcommittee Hearing Panel – 29 March 2022

**Subject:** Manchester Mini Market, 16 Oldham Street, Manchester, M1 1JQ -  
Application ref: Premises Licence variation 262249

**Report of:** Director of Planning, Building Control & Licensing

#### Summary

Application for the variation of a premises licence which has attracted objections.

#### Recommendations

That the Committee determine the application.

**Wards Affected:** Piccadilly

Manchester Strategy Outcomes	Summary of the contribution to the strategy
A thriving and sustainable City: supporting a diverse and distinctive economy that creates jobs and opportunities	Licensed premises provide a key role as an employer, in regeneration, and in attracting people to the city. The efficient processing of applications as well as effective decision making in respect of them, plays an essential role in enabling businesses to thrive and maximise contribution to the economy of the region and sub-region.
A highly skilled city: world class and home grown talent sustaining the city's economic success	An effective Licensing Policy and implementation will enable growth in our City by supporting businesses who promote the Licensing Objectives.
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	The Licensing process provides for local residents and other interested parties to make representations in relation to licensing applications. Representations have to be directly related to the licensing objectives.

A liveable and low carbon city: a destination of choice to live, visit and work.	An effective licensing system supports and enables growth and employment in our City with neighbourhoods that provide amenities suitable to the surrounding communities.
A connected city: world class infrastructure and connectivity to drive growth	

**Full details are in the body of the report, along with any implications for:**

Equal Opportunities Policy  
Risk Management  
Legal Considerations

### **Financial Consequences – Revenue**

None

### **Financial Consequences – Capital**

None

### **Contact Officers:**

Name: Fraser Swift  
Position: Principal Licensing Officer  
Telephone: 0161 234 1176  
E-mail: fraser.swift@manchester.gov.uk

Name: Helen Howden  
Position: Technical Licensing Officer  
Telephone: 0161 234 4294  
E-mail: premises.licensing@manchester.gov.uk

### **Background documents (available for public inspection):**

- Manchester City Council Statement of Licensing Policy 2016 - 2021
- Guidance issued under section 182 of the Licensing Act 2003, April 2017
- Any further documentary submissions by any party to the hearing

## 1. **Introduction**

- 1.1 On 30/01/2022, an application for the variation of an existing premises licence under s34 of the Licensing Act 2003 was made in respect of Manchester Mini Market, 16 Oldham Street, Manchester, M1 1JQ in the Piccadilly ward of Manchester. A location map of the premises is attached at **Appendix 1**.
- 1.2 A 28-day public consultation exercise was undertaken in accordance with Licensing Act 2003 regulations; requiring the application to be advertised by the displaying of a blue notice at or on the premises, a notice published in a newspaper or similar circulating in the local area, and details of the application published on the Council's website.
- 1.3 Representations may be made for or against an application during the consultation period. To be 'relevant' and, therefore, able to be taken into account in determining the application, they must be about the likely effect of the grant of the premises licence on the promotion of the licensing objectives. Where representations are made by persons who are not a responsible authority, they must not be frivolous or vexatious.
- 1.4 Relevant representations have been received in respect of this application and so it must be determined by a Licensing Hearing Panel in accordance with the Council's Constitution.

## 2. **Current Licence**

- 2.1 The premises licence holder is Mrs Joan Mary McGuire and a copy of the current licence is attached at **Appendix 2**.

## 3. **The Application**

- 3.1 A copy of the application is attached at **Appendix 3**.
- 3.2 The application request to vary the hours on the licence, and also to vary the plan. A summary of the application is as follows –

### **Description of proposed variation as given by the applicant:**

The application requests 24 hour sales of alcohol, and to provide late night refreshment until 5am, 7 days a week. The applicant states that there will be no entry to the premises after 11pm and that sales will take place through a hatch. Further details are as below

The application also requests to amend the plan attached to the licence so that it reflects the current layout of the premises which is now at 16 Oldham Street only. Formerly the premises was at 14-16 Oldham Street and the plan has not yet been updated.

### **Proposed hours and licensable activities:**

#### **Provision of regulated entertainment (recorded music):**

Current hours: Mon to Sun 24 hours per day

Proposed hours: No change proposed

Provision of late night refreshment:

Current hours: Mon to Sat 11pm to 11.30pm, Sun not permitted

Proposed hours: Mon to Sun 11pm to 5am

Supply of alcohol for consumption off the premises only:

Current hours: Mon to Sat 8am to 11pm, Sun 10am to 10.30pm

Proposed hours: Mon to Sun 24 hours per day

Opening hours:

Current hours: Unrestricted

Proposed hours: No change proposed

Seasonal variation:

There are seasonal variations that restrict the hours for sale of alcohol, and prevent night refreshment, on Good Friday and Christmas Day. The applicant is not asking to lift these restrictions. However, the application requests to lift the restriction that currently applies to late night refreshment being provided on Sundays.

**Proposed amendment to plan attached to licence:**

The plan that forms part of the current licence is for 14-16 Oldham Street, however the two premises are now operating separately with no access between the two. Licensable activities now only take place at 16 Oldham Street. A new layout plan has been submitted as part of this application to reflect this change. The applicant requests that the new plan is attached to the licence.

- 3.2.1 In accordance with the Live Music Act 2012 and Deregulation Act 2015, performances of Live Music and Recorded Music between the hours of 0800 and 2300 hours have been deregulated and so should not be regarded as licensable activities for the purposes of this application.
- 3.2.2 Any further details provided relating to any of the individual licensable activities are specified on the application form at **Appendix 3**.
- 3.3 **Activities unsuitable for children**
- 3.3.1 The applicant has not highlighted any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.
- 3.4 **Steps to promote the licensing objectives**
- 3.4.1 The applicant proposes to promote the licensing objectives by taking the steps identified in the operating schedule.
- 3.4.2 These steps must be translated into conditions by the licensing authority to be included in any granted premises licence, unless the conditions are modified by the Panel following consideration of relevant representations. These conditions are set out in the Schedule of Conditions at **Appendix 5**.

#### 4. **Relevant Representations**

4.1 Two relevant representations were received in respect of the application (**Appendix 4**). The personal details of all members of the public have been redacted. Original copies of these representation will be available to the Committee at the hearing.

Responsible Authorities:

- Greater Manchester Police – representation now withdrawn
- MCC Licensing and Out of Hours Compliance Team;

4.2 Summary of the representation:

Party	Grounds of representation	Recommends
<b>GMP</b>	(This representation has been withdrawn on the basis that the hours will be amended and conditions will be added if the application is granted. See appendix 5 for details of the agreement.)	Not applicable
<b>Licensing and Out of Hours Compliance</b>	<p>The area is described as a hub for crime, disorder and anti-social behaviour across the whole of Manchester city centre, which is extremely busy at night with a high footfall of patrons visiting bars/restaurants nearby.</p> <p>Street drinking is a particular issue in the area. Officers have encountered hostility from intoxicated individuals while undertaking enforcement of the enforcement of the Public Space Protection Order (PSPO). 24 Hour sales of alcohol would encourage further street drinking, leading to breaches of the PSPO and further issues with crime, disorder and ASB. Concerns are raised over where the alcohol would be consumed.</p> <p>The LOOH team believe that the purpose of the Licensing Act is to prevent problems from happening, and that decisions can and should be based on well-informed common sense and what is in the public interest.</p>	Refuse

4.3 The conditions proposed by GMP, and agreed to by the applicant, are set out in the Schedule of Conditions at **Appendix 5**.

#### 5. **Key Policies and Considerations**

##### 5.1 **Legal Considerations**

5.1.1 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005.

## 5.2 **New Information**

5.2.1 In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority may take into account documentary or other information produced by a party in support of their application, representations or notice either before the hearing or, with the consent of all parties, at the hearing.

## 5.3 **Hearsay Evidence**

5.3.1 The Panel may accept hearsay evidence and it will be a matter for the Panel to attach what weight to it that they consider appropriate. Hearsay evidence is evidence of something that a witness neither saw nor heard, but has heard or read about.

## 5.4 **The Secretary of State's Guidance to the Licensing Act 2003**

5.4.1 The Secretary of State's Guidance to the Licensing Act 2003 is provided for all parties involved in licensing. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

5.4.2 Section 4 of the 2003 Act 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 Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.

5.4.3 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.

## 5.5 **Manchester Statement of Licensing Policy**

5.5.1 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' its statement of licensing policy.

5.5.2 The Licensing Policy sets out the vision the licensing authority has for the regulation of licensed premises throughout Manchester and outlines the standards expected in order to ensure the promotion of the licensing objectives in the city. The Panel may depart from the policies should it consider doing so would benefit the promotion of the licensing objectives. Reasons are to be given for any such departure from the Policy.

5.5.3 Section 4 of the Policy (Operation of the Policy) sets out how the Licensing Policy is intended to be used in practice for licence applications and licensed premises.



- 5.5.4 Relevant to this application and the grounds of the representations made, the Panel are recommended to have regard to the following sections of the Policy:

**Section 6: What we aim to encourage**

This section identifies certain types of venues and initiatives the licensing authority aims to encourage in order to promote an inclusive evening and night-time economy not simply focused on the consumption of alcohol. We aim to encourage:

- Premises that will extend the diversity of entertainment and attract a wider range of participants
- Live music, especially original material, which will provide a range of live performances and styles of music, provided that such entertainment does not undermine the licensing objectives
- National cultural institutions, global sports events and cultural festivals
- Non-drink-led premises, including restaurants, cafes, theatres and cinemas
- Communication and integration with local residents and businesses through licensees consulting with those in the local area prior to an application
- Participation in Pubwatches, off licence forums and other crime-reduction partnerships
- Engagement with the NITENET radio scheme and DISC secure information sharing platform by city centre venues through the Cityco Manchester Business Crime Reduction Partnership
- Designing out crime in the layout of the premises

**Section 7: Local factors**

This section sets out key issues that applicants are expected to take into account relevant to the individual characteristics of the premises when preparing their operating schedule and address any local factors relevant to their premises.

Having regard to the grounds of the representations made, the Panel are recommended to have regard to the following Factors:

- Identified risk factors specific to the licensed premises
- Evidence of pre-existing problems in the area
- Proximity of takeaways and off-licences to nightlife entertainment areas
- The proximity of the premises to local residents and other local businesses, particularly in relation to the potential for nuisance

**Section 8: Manchester's standards to promote the licensing objectives**

This section identifies the standards that the licensing authority expects of licensed premises in Manchester. It is recognised that not all standards will be appropriate to apply in every situation to every premises, and applicants are not obliged to include all standards in their operating schedule. The degree to which standards would be appropriate is expected to be proportionate to the risk posed against the promotion of the licensing objectives having regard to the individual circumstances of the premises. The standards are not exhaustive and

the licensing authority will have regard to any relevant issues raised in any representation that may fall outside them.

MS1	Implement effective security measures at the premises
MS2	Effective general management of the premises
MS3	Responsible promotion and sale of alcohol
MS5	Prevent on-street consumption of alcohol
MS12	Prevent underage sales of alcohol, including proxy sales

## 6. **Conclusion**

- 6.1 A licensing authority must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives:
- the prevention of crime and disorder
  - public safety;
  - the prevention of public nuisance; and
  - the protection of children from harm.
- 6.2 In considering the matter, the Panel should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. In reaching the decision, regard must also be had to relevant provisions of the national guidance and the Council’s licensing policy statement.
- 6.3 The Panel must take such of the steps set out below that it considers appropriate for the promotion of the licensing objectives:
- a) To grant the licence subject to the conditions consistent with the operating schedule accompanying the application, which the Panel may modify to such extent as they consider appropriate;
  - b) To reject the whole or part of the application
- 6.4 The conditions consistent with the operating schedule may be modified to alter or omit any of them or to add any new condition, including restricting the times at which licensable activities authorised by the licence can take place.
- 6.5 However, conditions should not be imposed on a licence which are unrelated to the variation sought.
- 6.6 All licensing determinations should be considered on the individual merits of the application.
- 6.7 The Panel’s determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.
- 6.8 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

6.9 **The Panel is asked to determine the application**

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Manchester Mini Market  
16 Oldham Street, Manchester, M1 1JQ

Premises Licensing  
Manchester City Council

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**PREMISE NAME:** Manchester Mini Market

**PREMISE ADDRESS:** 16 Oldham Street, Manchester, M1 1JQ

**WARD:** Piccadilly

**HEARING DATE:** 21/03/2022



# MANCHESTER

## CITY COUNCIL

### LICENSING ACT 2003 PREMISES LICENCE

<b>Premises licence number</b>	<b>051066</b>
<b>Granted</b>	<b>01/09/2005</b> (Detail Change 13/12/2007)

#### Part 1 - Premises details

<b>Name and address of premises</b>	
<b>Mace</b> 14-16 Oldham Street	
<b>Post town</b> Manchester	<b>Post code</b> M1 1JQ
<b>Telephone number</b>	01612360156

<b>Licensable activities authorised by the licence</b>
<ol style="list-style-type: none"> <li>1. The sale by retail of alcohol*</li> <li>2. The provision of regulated entertainment (limited to: recorded music)</li> <li>3. The provision of late night refreshment.</li> </ol> <p>* All references in this licence to "sale of alcohol" are to sale by retail.</p>

<b>The times the licence authorises the carrying out of licensable activities</b>
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<b>Sale by retail of alcohol</b>		
<b>Standard timings</b>		<b>Seasonal variations</b>
Monday: Start 0800 Finish 2300		None.
Tuesday: Start 0800 Finish 2300		<b>On/off supplies</b>
Wednesday: Start 0800 Finish 2300		The sale of alcohol is licensed for consumption off the premises only.
Thursday: Start 0800 Finish 2300		<b>Further details</b>
Friday: Start 0800 Finish 2300		None.
Saturday: Start 0800 Finish 2300		
Sunday: Start 1000 Finish 2230		
<b>Non-Standard Timings</b>		
<u>Good Friday</u> : Start 0800 Finish 2230		
<u>Christmas Day</u> : Start 1200 Finish 1500 Start 1900 Finish 2230		

Recorded music		
Standard timings		Seasonal variations
Monday:	Start 0001	Finish 0000
Tuesday:	Start 0001	Finish 0000
Wednesday:	Start 0001	Finish 0000
Thursday:	Start 0001	Finish 0000
Friday:	Start 0001	Finish 0000
Saturday:	Start 0001	Finish 0000
Sunday:	Start 0001	Finish 0000
		None
		<b>Indoors/outdoors:</b>
		This activity is licensed to take place indoors only.
		<b>Further details</b>
		None
Non standard timings		
None		

Provision of late night refreshment		
Standard timings		Seasonal variations
Monday:	Start 2300	Finish 2330
Tuesday:	Start 2300	Finish 2330
Wednesday:	Start 2300	Finish 2330
Thursday:	Start 2300	Finish 2330
Friday:	Start 2300	Finish 2330
Saturday:	Start 2300	Finish 2330
Sunday:	None	
		None.
		<b>Indoors/outdoors</b>
		This activity is licensed to take place indoors only.
		<b>Further details</b>
		The provision of late night refreshment is not permitted on any day when the sale of alcohol is not licensed beyond 2230.
Non standard timings		
The provision of late night refreshment is not permitted on any Sunday, Good Friday or Christmas Day.		

Hours premises are open to the public	
Standard timings	Seasonal variations
	<b>Further details</b>
Non-Standard Timings	



**Part 2**

<b>Name, (registered) address, telephone number and email (where relevant) of holder of premises licence</b>
--

<b>Mrs Joan Mary McGuire</b> (INFORMATION REDACTED)
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<b>Registered number of holder, for example company number, charity number (where applicable)</b>
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<b>Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol</b>
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<b>Mrs Joan Mary McGuire</b> (INFORMATION REDACTED)
--

<b>Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises the supply of alcohol</b>
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Personal licence number: PA0303 Issuing authority: Rochdale Metropolitan Borough Council
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**Annex 1 – Mandatory conditions****Door Supervisors**

Only individuals licensed by the Security Industry Authority shall be used at the premises to undertake security activities, which include guarding against: -

- a) Unauthorized access or occupation (e.g. through door supervision),
- b) Outbreaks of disorder, or
- c) Damage

**Supply of alcohol**

No supply of alcohol may be made under this 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

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

<b>Annex 2 – Conditions consistent with the operating schedule</b>
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- |   |
|---|
| <p>1. The above time restrictions in relation to the sale of alcohol do not prohibit: -</p> <ul style="list-style-type: none"> <li>a) During the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;</li> <li>b) The ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;</li> <li>c) The sale of alcohol to a trader or club for the purposes of the trade or club;</li> <li>d) The sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces.</li> </ul> <p>2. Alcohol shall not be sold in an open container or be consumed in the licensed premises.</p> |
|---|

<b>Annex 3 – Conditions attached after a hearing by the licensing authority</b>
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Not applicable.
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<b>Annex 4 – Plans</b>
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See attached.
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**Issued by**

**The Licensing Unit,  
Regulatory & Enforcement Services  
Manchester City Council  
Room 1012, Town Hall Extension  
Manchester M60 2LA.**

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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**Application to vary a premises licence under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/We Joan Mcguire

*(Insert name(s) of applicant)*

**being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below**

Premises licence number 051066
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**Part 1 – Premises Details**

Postal address of premises or, if none, ordnance survey map reference or description 14-16 Oldham Street						
		<table border="1"> <tr> <td align="center">RECEIVED</td> </tr> <tr> <td align="center">- 6 AUG 2021</td> </tr> <tr> <td align="center">PREMISES TEAM</td> </tr> </table>		RECEIVED	- 6 AUG 2021	PREMISES TEAM
RECEIVED						
- 6 AUG 2021						
PREMISES TEAM						
Post town	Manchester	Postcode	M1 1JQ			
Telephone number at premises (if any)	[REDACTED]					
Non-domestic rateable value of premises	£17000					

This is the current address on the licence however 14 and 16 Oldham Street are currently operating as 2 separate premises with no access between and each is rated separately. The applicant has confirmed that the licensable activities now only take place in the premises at 16 Oldham Street

The rateable value of 16 Oldham Street is £36,000

**Part 2 – Applicant details**

Daytime contact telephone number	[REDACTED]		
E-mail address (optional)	[REDACTED]		
Current postal address if different from premises address	[REDACTED]		
Post town	[REDACTED]	Postcode	[REDACTED]

**Part 3 - Variation**

Please tick as appropriate

Do you want the proposed variation to have effect as soon as possible?  Yes  No

If not, from what date do you want the variation to take effect?

DD	MM	YYYY
[ ] [ ]	[ ] [ ]	[ ] [ ] [ ] [ ]

**Please describe briefly the nature of the proposed variation (Please see guidance note 2)**

I am the owner of an off-licence at 14-16 Oldham Street, Manchester, M1 1JQ. I am the holder of a Personal Alcohol Licence – Number PA0303. Currently, the license authorises the sale of retail alcohol on Monday to Saturday, between 08:00 and 23:00, and on Sunday between 10:00 and 22:30. I am requesting that the license be upgraded to permit the sale of alcohol 24 hours a day.

I have owned the above off-licence for over 30 years. It is situated near to pubs, bars and clubs which sell alcohol until early hours in the morning. I have never had any alcohol related incidents occur in or around my shop. After 23:00, the shop would be closed, and any alcohol would be sold through a hatch. In addition, I have experienced staff members with alcohol hospitality licenses and extensive training, so no alcohol would be sold to individuals who are overly intoxicated, or at risk of causing any form of disturbance.

The application also asks to extend the hours for late night refreshment

The application asks to amend the plan attached to the licence as the area being used for the off licence is now just for number 16 Oldham Street (not 14 to 16 Oldham Street as previously)

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend:



**Part 4 Operating Schedule**

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

**Provision of regulated entertainment****Please tick all that apply**

- |  |                          |
|--|--------------------------|
| a) plays (if ticking yes, fill in box A)   | <input type="checkbox"/> |
| b) films (if ticking yes, fill in box B)   | <input type="checkbox"/> |
| c) indoor sporting events (if ticking yes, fill in box C)  | <input type="checkbox"/> |
| d) boxing or wrestling entertainment (if ticking yes, fill in box D)   | <input type="checkbox"/> |
| e) live music (if ticking yes, fill in box E)  | <input type="checkbox"/> |
| f) recorded music (if ticking yes, fill in box F)  | <input type="checkbox"/> |
| g) performances of dance (if ticking yes, fill in box G)   | <input type="checkbox"/> |
| h) anything of a similar description to that falling within (e), (f) or (g)<br>(if ticking yes, fill in box H) | <input type="checkbox"/> |

**Provision of late night refreshment** (if ticking yes, fill in box I)

**Supply of alcohol** (if ticking yes, fill in box J)

**In all cases complete boxes K, L and M**

**A**

<b>Plays</b> Standard days and timings (please read guidance note 7)			<b><u>Will the performance of a play take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<b><u>Please give further details here</u></b> (please read guidance note 4)		
Mon					
Tue					
Wed					
Thur					
Fri					
Sat					
Sun					
			<b><u>State any seasonal variations for performing plays</u></b> (please read guidance note 5)		
			<b><u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)		

**B**

<b>Films</b> Standard days and timings (please read guidance note 7)			<b>Will the exhibition of films take place indoors or outdoors or both – please tick</b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Mon			<b>Please give further details here</b> (please read guidance note 4)		
Tue					
Wed			<b>State any seasonal variations for the exhibition of films</b> (please read guidance note 5)		
Thur					
Fri			<b>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</b> (please read guidance note 6)		
Sat					
Sun					

## C

<b>Indoor sporting events</b> Standard days and timings (please read guidance note 7)			<b><u>Please give further details</u></b> (please read guidance note 4)
Day	Start	Finish	
Mon			
Tue			<b><u>State any seasonal variations for indoor sporting events</u></b> (please read guidance note 5)
Wed			<b><u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)
Thur			
Fri			
Sat			
Sun			

**D**

<b>Boxing or wrestling entertainments</b> Standard days and timings (please read guidance note 7)			<b><u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Mon				<b><u>Please give further details here</u></b> (please read guidance note 4)	
Tue					
Wed			<b><u>State any seasonal variations for boxing or wrestling entertainment</u></b> (please read guidance note 5)		
Thur					
Fri			<b><u>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)		
Sat					
Sun					

**E**

<b>Live music</b> Standard days and timings (please read guidance note 7)			<b>Will the performance of live music take place indoors or outdoors or both – please tick</b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<b>Please give further details here</b> (please read guidance note 4)		
Mon					
Tue					
Wed					
Thur					
Fri					
Sat					
Sun					
			<b>State any seasonal variations for the performance of live music</b> (please read guidance note 5)		
			<b>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list</b> (please read guidance note 6)		

## F

<b>Recorded music</b> Standard days and timings (please read guidance note 7)			<b>Will the playing of recorded music take place indoors or outdoors or both – please tick</b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			<b>Please give further details here</b> (please read guidance note 4)		
Tue			<b>State any seasonal variations for the playing of recorded music</b> (please read guidance note 5)		
Wed			<b>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list</b> (please read guidance note 6)		
Thur					
Fri					
Sat					
Sun					

## G

Performances of dance Standard days and timings (please read guidance note 7)			<b><u>Will the performance of dance take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<b><u>Please give further details here</u></b> (please read guidance note 4)		
Mon					
Tue					
Wed					
Thur					
Fri					
Sat					
Sun					
			<b><u>State any seasonal variations for the performance of dance</u></b> (please read guidance note 5)		
			<b><u>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)		



**H**

<b>Anything of a similar description to that falling within (e), (f) or (g)</b> Standard days and timings (please read guidance note 7)			Please give a description of the type of entertainment you will be providing		
Day	Start	Finish	<b><u>Will this entertainment take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			<b><u>Please give further details here</u></b> (please read guidance note 4)		
Wed					
Thur			<b><u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u></b> (please read guidance note 5)		
Fri					
Sat			<b><u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)		
Sun					

I

<b>Late night refreshment</b> Standard days and timings (please read guidance note 7)			Will the provision of late night refreshment take place indoors or outdoors or both - please tick (please read guidance note 3)			
			Indoors	<input type="checkbox"/>		
			Outdoors	<input checked="" type="checkbox"/>		
			Both	<input type="checkbox"/>		
Day	Start	Finish	Please give further details here (please read guidance note 4)			
Mon	23.00	05.00				
Tue	23.00	05.00				
Wed	23.00	05.00			State any seasonal variations for the provision of late night refreshment (please read guidance note 5)	
Thur	23.00	05.00				
Fri	23.00	05.00			Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list (please read guidance note 6)	
Sat	23.00	05.00				
Sun	23.00	05.00				
			NON STANDARD TIMINGS			

J

**J**

Supply of alcohol Standard days and timings (please read guidance note 7)			Will the supply of alcohol be for consumption – <u>please tick</u> (please read guidance note 8)	On the premises	<input type="checkbox"/>
Day	Start	Finish		Off the premises	<input checked="" type="checkbox"/>
Mon	0000	2400	State any seasonal variations for the supply of alcohol (please read guidance note 5)	Both	<input type="checkbox"/>
Tue	0000	2400			
Wed	0000	2400			
Thur	0000	2400	<u>Non-standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the columns on the left, please list</u> (please read guidance note 6)  The provision of late night refreshments is not permitted on Good Friday or Christmas day		
Fri	0000	2400			
Sat	0000	2400			
Sun	0000	2000			

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 9).

None

**L**

<b>Hours premises are open to the public</b> Standard days and timings (please read guidance note 7)			<b>State any seasonal variations</b> (please read guidance note 5)
Day	Start	Finish	
Mon			
Tue			
Wed			
Thur			
Fri			
Sat			
Sun			<b>Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list</b> (please read guidance note 6)

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking.

Please tick as appropriate

- I have enclosed the premises licence
- I have enclosed the relevant part of the premises licence

If you have not ticked one of these boxes, please fill in reasons for not including the licence or part of it below

Reasons why I have not enclosed the premises licence or relevant part of premises licence.

**M**

**Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:**

**a) General – all four licensing objectives (b, c, d and e) (please read guidance note 10)**

To prevent crime, my staff will not be selling alcohol to individuals who are overly intoxicated. My staff members have alcohol hospitality licenses and extensive experience in this field. Alcohol will be sold through a hatch after 23:00 and buyers would not be permitted to consume alcohol in or near the premises. We would also ensure that alcohol is not sold to individuals or groups in overly large quantities.

**b) The prevention of crime and disorder**

There are CCTV cameras which capture footage from outside the shop. The shop is situated in the city centre, yards away from nightclubs/pubs/bars, which are manned by security and bouncers.

**c) Public safety**

Managing site access, limiting the sale of alcohol to responsible individuals, CCTV surveillance, adequate lighting around the premises.

**d) The prevention of public nuisance**

As stated in (a), we would not be selling large quantities of alcohol to groups or individuals, and we would not be selling alcohol to individuals who are overly intoxicated.

**e) The protection of children from harm**

During the proposed hours of variation, there are no children present near the location.

**Checklist:**

**Please tick to indicate agreement**

- I have made or enclosed payment of the fee; or  
I have not made or enclosed payment of the fee because this application has been made in  
relation to the introduction of the late night levy.
- I have sent copies of this application and the plan to responsible authorities and others where  
applicable.
- I understand that I must now advertise my application.
- I have enclosed the premises licence or relevant part of it or explanation
- I understand that if I do not comply with the above requirements my application will be  
rejected.

**IT IS AN OFFENCE, LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING  
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 5 – Signatures** (please read guidance note 11)

**Signature of applicant (the current premises licence holder) or applicant's solicitor or other duly authorised agent** (please read guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	
Capacity	

**Where the premises licence is jointly held, signature of 2nd applicant (the current premises licence holder) or 2nd applicant's solicitor or other authorised agent** (please read guidance note 13). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	
Capacity	

**Contact name (where not previously given) and address for correspondence associated with this application** (please read guidance note 14)

14-16 Oldham Street,  
Piccadilly  
Manchester  
M1 1JQ

Post town	Manchester	Post code	M1 1JQ
Telephone number (if any)			
If you would prefer us to correspond with you by e-mail, your e-mail address (optional)			



By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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**MANCHESTER  
CITY COUNCIL**

**Licensing & Out of Hours Compliance Team - Representation**

Name	Jonathon Mathers
Job Title	Licensing Out of Hours Officer
Department	Licensing and Out of Hours Compliance Team
Address	Level 1, Town Hall Extension, Manchester, M60 2LA
Email Address	<a href="mailto:Jonathon.mathers@manchester.gov.uk">Jonathon.mathers@manchester.gov.uk</a>
Telephone Number	0161 234 1220

**Premise Details**

Application Ref No	M/262249
Name of Premises	Manchester Mini Market
Address	16 Oldham Street, Manchester

**Representation**

Outline your representation regarding the above application below. This representation should describe the likely effect of the grant of the licence/certificate on the licensing objectives and on the vicinity of the premises.

The Licensing and Out of Hours (LOOH) team have assessed the likely impact of the grant of this application taking into account a number of factors, including the nature of the area in which the premises is located and any potential risk the granting of this licence could lead to undermining the four licensing objectives.

In making this representation, the LOOH team have also considered Manchester City Council's Statement of Licensing policy, in particular S7.12, 7.14 & 7.16 regarding how evidence of pre-existing problems within the local area should be considered when applications are made for Licensable activity:

*7.12 Where its discretion is engaged, the authority will give consideration to the general character of the surrounding area, including crime and antisocial behaviour (ASB) levels, litter problems, issues regarding underage or proxy sales, and noise complaints. Where there are demonstrable problems linked to the operation of licensed premises in the area and the evidence demonstrates problems with licensed premises in the area, the licensing authority will, in exercising its discretion, take this into consideration when deciding what (if any) steps are appropriate and proportionate in the individual case.*

*7.14 Areas with a high density of licensed premises that operate as well-known entertainment zones draw in large numbers of legitimate users, a minority of whom may become caught up in unplanned violent or disorderly incidents, or may generate public nuisance, particularly if under the influence of alcohol. They may also attract a number of 'illegitimate' users who*

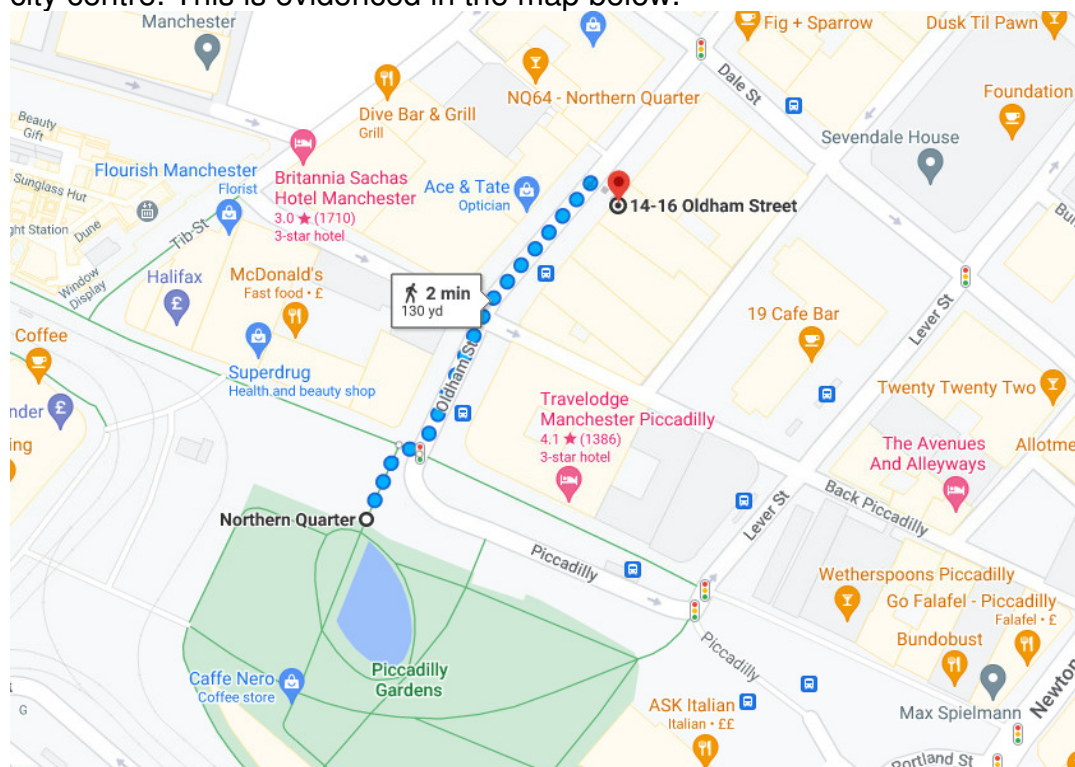
*purposely target the area in order to exploit various criminal opportunities (eg. by using the anonymity of large crowds to conduct theft or preying upon intoxicated and therefore vulnerable persons).*

**7.16** *The authority will also consider the impact of drinking in public places. Several areas of the city, including the city centre, are subject to Designated Public Place Orders (DPPOs) restricting alcohol in public spaces. DPPOs have been superseded by Public Space Protection Orders, with effect from 2014.*

Licensing Out of Hours have also considered section 7.17 of the council's statement of licensing policy in relation to the proximity of takeaways and off-licences to nightlife entertainment areas:

*7.17 Such premises typically lack the type of design and management provisions necessary to process the custom of a large intoxicated late-night customer base, and may act as flashpoints for alcohol-related crime and disorder. Additionally, there is a risk of staff being subjected to threatening behaviour, physical violence, and property damage. Operators are encouraged to consider conflict management training and/or employment of door supervisors, where appropriate. However, where the authority's discretion is engaged, consideration may be given to restricting hours of operation to avoid the risk of such premises acting as flashpoints for crime and disorder.*

The Manchester Mini Market premises are situated at 16 Oldham Street in the city centre, 130 yards away from Piccadilly Gardens which is a hub for crime, disorder and anti-social behaviour across the whole of Manchester city centre. This is evidenced in the map below.



This application seeks to amend the premises current licence by supplying alcohol off sales for 24hrs a day and to add the provision of late-night refreshment. Oldham Street is an arterial route within the city centres late

night economy and at night is extremely busy with a high footfall of patrons utilising the various bars/restaurants along the street.

Licensing Out of Hours officers regularly visit Oldham Street throughout the night passing through Piccadilly Gardens as part of proactive visits to Licensed Premises within this area of the city centre. Officers regularly encounter intoxicated individuals and groups within these areas, some of whom are contributing to the ongoing issues with crime, disorder and ASB.

Manchester City Centre has a Public Space Protection Order (PSPO) in place to control the ongoing anti-social behaviour including street drinking across the city. Street drinking is one issue in the city that contributes to the high levels of crime, disorder and anti-social behaviour witnessed within Piccadilly Gardens and the surrounding area. Licensing Out of Hours have worked with the council's Anti-Social Behaviour team and Greater Manchester Police in order to promote the city centres PSPO that is in place. Between October – December 2021, there were 10 planned visits to Piccadilly Gardens in order to educate and enforce the PSPO. During these visits, officers confiscated alcohol from street drinkers in and around the gardens and the Northern Quarter. On some occasions, officers were met with hostility from intoxicated individuals when enforcing the PSPO.

Licensing Out of Hours believe if the changes submitted as part of this application were to be accepted, the 24hr sales of alcohol would encourage already intoxicated individuals and others to purchase alcohol, thus encouraging street drinking and leading to breaches of the PSPO and further issues with crime, disorder and ASB. We would have serious concerns about the types of individuals wanting to purchase alcohol after 2300hrs and where they would want to consume it.

Furthermore, Licensing Out of Hours as part of this representation have also considered relevant case law. We refer to the case of *Thwaites plc V Wirral Magistrates Court and Others (.2008)*. This case, referred to as 'the Thwaites case', is important because it emphasises the important role that Responsible Authorities have in providing information to decision makers to contextualise the issue before them.

This case is sometimes misconstrued as requiring decisions to be based on 'real evidence', and that conditions cannot be imposed until problems have actually occurred. This is wrong. The purpose of the Act is to prevent problems from happening. Decisions can and should be based on well-informed common sense. The case recognises that Responsible Authorities are experts in their fields, and that weight should be attached to their representations. It is most relevant when opposing grant applications.

Licensing Out of Hours have also considered the case of *East Lindsey District Council v Abu Hanif (t/a Zara's Restaurant) (2016)*

Mr Justice Jay said: the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

Taking into consideration the information provided above, Licensing Out of Hours are of the firm belief that if this application was to be granted, it is highly likely that the ongoing issues around crime, disorder and ASB within this area would be worsened, thus undermining the Licensing Objectives of:

- The Prevention of Public Nuisance
- The Prevention of Crime and Disorder.

Licensing and Out of Hours have no doubt that agreeing to this application would have a significant detrimental effect on the area, it's residents, people who work in the city and it's visitors. Due to the information presented above, Licensing Out of Hours recommend that the application should be refused.

Recommendation: **Refuse Application**

All England Official Transcripts (1997-2008)

### **Daniel Thwaites plc v Wirral Borough Magistrates' Court**

*Licensing - Licence - Application for licence - Guidance issued by Secretary of State as to discharge of functions under legislation - Licensing authority granting licence - Local objectors appealing to magistrates' court - Magistrates' court imposing restrictions - Whether restrictions necessary to promote licensing objective - Whether magistrates' court having proper regard to guidance - Whether decision of magistrates' court lawful - Licensing Act 2003, s 4*

[2008] EWHC 838 (Admin), CO/5533/2006, (Transcript: Wordwave International Ltd (A Merrill Communications Company))

#### **QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)**

**BLACK J**

**10 MARCH, 6 MAY 2008**

**6 MAY 2008**

This is a signed judgment handed down by the judge, with a direction that no further record or transcript need be made pursuant to Practice Direction 6.1 to Pt 39 of the Civil Procedure Rules (formerly RSC Ord 59, r (1)(f), Ord 68, r 1). See Practice Note dated 9 July 1990, [1990] 2 All ER 1024.

D MW Pickup for the Claimant

The Defendant did not appear and was not represented

D Flood for the First Interested Party

M Copeland for the Second Interested Party

Naphens plc; Kirwans; Wirral MBC

**BLACK J:**

[1] This is an application by Daniel Thwaites plc ("the Claimant") for judicial review of a licensing decision made by the Wirral Magistrates' Court ("the Magistrates' Court") on 5 April 2006 and that court's decision on 21 April 2006 concerning the costs of the proceedings. The Claimant seeks an order quashing both decisions. Permission to apply for judicial review was granted by Pitchford J on 2 November 2006.

#### *THE FACTUAL BACKGROUND*

[2] The Claimant owns the Saughall Hotel in Saughall Massie, Wirral which it operates as licensed premises ("the premises"). It originally held a licence under the Licensing Act 1964. In June 2005, it commenced an application to the Licensing Sub-Committee of the Metropolitan Borough of Wirral ("the licensing authority")

for the existing licence to be converted to a premises licence under the Licensing Act 2003 and for the licence to be varied simultaneously.

**[3]** In essence, the Claimant was seeking to conduct business at the premises for longer hours than were permitted under the original licence. The police did not support the extension of the hours to the extent that the Claimant initially proposed. The Claimant agreed to restrict the hours to those that were acceptable to the police. Accordingly, the licensing authority was asked to grant a licence that would permit music and dancing to 11pm and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1pm, with the doors closing one hour after the last alcohol sale every night.

**[4]** The police withdrew their representations against the modified proposals and did not appear before the licensing authority when the matter was heard on 23 August 2005. No representations were made by the Wirral Environmental Health Services either. However, there was opposition to the proposals at the hearing from the Saughall Massie Conservation Society ("the First Interested Party") and other Saughall Massie residents.

**[5]** The Claimant told the licensing authority at the hearing that the hours of operation at the premises would not vary significantly from the existing hours of operation and that the application for extended hours was to allow flexibility to open later "on special occasions" This was a matter of which the licensing authority took note as is recorded in the minutes of their determination.

**[6]** The licence was granted in the modified terms requested together with an additional hour for licensable activities and an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at the major bank holidays. Special arrangements were also permitted for New Year's Eve. The licensing authority removed certain conditions that had been imposed on the old licence (requiring all alcohol to be consumed within 20 minutes of the last alcohol sale and banning children under 14 from the bar) and imposed other conditions which were obviously aimed at controlling noise, namely that the area outside must be cleared by 11pm, that the premises must promote the use of taxi firms which use a call-back system, that all doors and windows must be kept closed when regulated entertainment was provided and that prominent notices should be placed on the premises requiring customers to leave quietly.

**[7]** The Saughall Massie Conservation Society and "others" appealed against the licensing decision to the Magistrates' Court on the ground that the licensing authority's decision "was not made with a view to promotion of and in accordance with the licensing objectives pursuant to s 4, Pt 2 of the Licensing Act 2003".

**[8]** The appeal occupied the Magistrates' Court from 3 - 5 April 2006. The Respondents to the appeal were the licensing authority and the Claimant which both defended the licensing authority's decision. Witnesses were called including Saughall Massie residents, Police Sergeant Yehya who dealt with the stance of the Merseyside police, and Mr Miller, the manager of the premises.

**[9]** The justices granted the appeal. Their Reasons run to three pages of typescript, one page of which is entirely taken up with setting out the new hours of operation they imposed. These permitted entertainment until 11pm and alcohol sales until 11.30pm on all nights except Friday and Saturday when entertainment would be permitted until 11.30pm and alcohol sales until midnight. The premises could remain open to the public until midnight on all nights except Friday and Saturday when they could close at 1am. Similar provisions were imposed to those imposed by the licensing authority in relation to later opening at Christmas and major bank holidays and the provisions relating to New Year's Eve and the conditions of the licence remained unaltered.



**[10]** The new licence had come into effect on 24 November 2005 so the new arrangements had been running for several months by the time of the hearing before the Magistrates' Court. There had been no formal or recorded complaints against the premises under the old or the new regime as the justices acknowledged in their Reasons. The residents who gave evidence were fearful of problems if the extended hours were allowed in the summer. The Chairman of the Conservation Society, who gave oral evidence, spoke of people urinating in the gardens and a problem with litter. It appears from the statement filed by the Chairman of the Bench for these judicial review proceedings that evidence was also given of interference with machinery on nearby Diamond Farm. The justices' Reasons make no reference at all to these matters. As to the statements of the "Witnesses of the Appellant", they say simply that they have read and considered them but attached little or no weight to them.

**[11]** The justices and their legal advisor have filed a considerable amount of material in response to the judicial review proceedings, in all 31 closely typed pages. These comprise their Response to the Claim, statements from Alistair Beere (who was the chairman of the bench), Mary Woodhouse (another of the bench) and Stephen Pickstock (the legal advisor), and what is said in the index to be a document by Mr Beere from which he prepared his statement. There was limited argument before me as to the status of these documents and the weight that I should give to them. It was not submitted that I should decline to have *any* regard to them although I think it is fair to say that it was common ground between the parties, rightly in my view, that I should concentrate principally on the Reasons. It is established by authorities such as *R v Westminster City Council ex parte Ermakov* [1996] 2 All ER 302, 95 LGR 119, [1996] 2 FCR 208 that the court can admit evidence to elucidate or, exceptionally, correct or add to the reasons given by the decision maker at the time of the decision but that it should be very cautious about doing so. The function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. In the circumstances, I have read carefully what the magistrates have provided but approached its role in the judicial review proceedings cautiously.

#### *THE BROAD NATURE OF THE CLAIM IN RELATION TO THE LICENSING DECISION*

**[12]** The Claimant argues that the Magistrates' Court decision is unlawful for a number of reasons. It is argued that the decision was not in line with the philosophy of the Licensing Act 2003 ("the Act") and imposed restrictions on the Claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on speculation rather than evidence, that it took into account irrelevant considerations and failed to take into account proper considerations, and that it was a decision to which no properly directed Magistrates' Court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises must close, it is submitted that this was not a matter which can be regulated under the Act. It is further argued that the magistrates failed to give adequate reasons for their decision.

#### *THE LEGAL BACKGROUND*

**[13]** The Licensing Act 2003 was intended to provide a "more efficient" "more responsive" and "flexible" system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.

**[14]** Note 12 of the explanatory notes to the Act gives an indication of the approach to be taken under the Act. It reads:

"12 In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on.

Instead, the Applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives."

**[15]** Section 1 of the Act provides:

"S1(1) For the purposes of this Act the following are licensable activities -

- (a) the sale by retail of alcohol,
- (b) [clubs]
- (c) the provision of regulated entertainment, and
- (d) the provision of late night refreshment."

**[16]** To carry on a licensable activity, a premises licence granted under Pt 3 of the Act is generally required, s 2. Application for a premises licence must be made to the relevant licensing authority, s 17(1).

**[17]** By virtue of s 4, the licensing authority must carry out all its functions under the Act (including its functions in relation to determining an application for a premises licence or an application for a variation of a premises licence) with a view to promoting the "licensing objectives". These are set out in s 4 as follows:

"S4(2) 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."

**[18]** In carrying out its licensing functions, by virtue of s 4(3) the licensing authority must also have regard to its licensing statement published under s 5 and any guidance issued by the Secretary of State under s 182.

**[19]** Section 182 obliges the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. Guidance was issued in July 2004 ("the Guidance"). It was updated in June 2007 but it is the original guidance that is relevant in this case. In any event, none of the changes made are material to the issues I have to determine.

**[20]** The Foreword says that the Guidance:

"is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean we are intent on eroding local discretion. On

the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice."

**[21]** As the Guidance says in para 1.7, it does not replace the statutory provisions of the Act or add to its scope. Paragraph 2.3 says:

"Among other things, section 4 of the 2003 Act 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. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and 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 actions. 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."

**[22]** An application to the licensing authority for a premises licence must be accompanied by an operating schedule in the prescribed form including a statement of the matters set out in s 17(4) which are as follows:

- "(a) the relevant licensable activities,
- (b) the times during which it is proposed that the relevant licensable activities are to take place,
- (c) any other times during which it is proposed that the premises are to be open to the public,
- (d) where the Applicant wishes the licence to have effect for a limited period, that period,
- (e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the Applicant wishes to have specified in the premises licence as the premises supervisor,
- (f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,
- (g) the steps which it is proposed to take to promote the licensing objectives,
- (h) such other matters as may be prescribed."

**[23]** Section 18 deals with the determination of an application for a premises licence. Section 35 deals in very similar terms with the determination of an application to vary a premises licence. It will be sufficient only to set out here the provisions of s 18.

**[24]** Section 18(2) provides that, subject to sub-s (3), the authority must grant the licence in accordance with the application subject only to:

- "(a) such conditions as are consistent with the operating schedule accompanying the application, and
- (b) any conditions which must under section 19, 20 or 21 be included in the licence."

**[25]** Section 19 deals with premises licences which authorise the supply of alcohol. Such licences must include certain conditions ensuring that every supply of alcohol is made or authorised by a person who holds a personal licence and that no supply of alcohol is made when there is no properly licensed designated premises supervisor. Sections 20 and 21 are not relevant to this claim.

**[26]** Section 18(3) provides that where relevant representations are made, the authority has certain specified obligations. In so far as is relevant to this appeal "relevant representations" are defined in s 18(6) as follows:

"(6) For the purposes of this section, 'relevant representations' means representations which -

(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,

(b) meet the requirements of sub-section (7),

(c) . . ."

**[27]** Sub-section (7) provides:

"(7) The requirements of this subsection are -

(a) that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c),

(b) that they have not been withdrawn, and

(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious."

**[28]** Where relevant representations are made, the authority must hold a hearing to consider them unless the authority, the Applicant and each person who has made representations agrees that a hearing is unnecessary. By virtue of s 18(3)(b), the authority must also "(b) having regard to the representations, take such of the steps mentioned in sub-section (4) (if any) as it considers necessary for the promotion of the licensing objectives."

**[29]** Section 18(4) provides:

"(4) The steps are -

(a) to grant the licence subject to -

(i) the conditions mentioned in sub-section (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application."

**[30]** Conditions are modified for the purposes of sub-s (4)(a)(i) if any of them is altered or omitted or any new condition is added.

**[31]** During the currency of a premises licence, by virtue of s 51, an interested party (broadly speaking, a local resident or business) or a responsible authority (police, fire, environmental health etc) may apply to the relevant licensing authority for a review of the licence on a ground which is relevant to one or more of the licensing objectives. By virtue of s 52, a hearing must be held to consider the application and any relevant representations and the authority must take such steps from a specified list as it considers necessary for the promotion of the licensing objective. The steps range from modifying the conditions of the licence to suspending it or revoking it completely.

**[32]** The Act makes provision in Pt 5 for "permitted temporary activity" which, loosely speaking, is a form of ad hoc licensing to cover licensable activities which are not covered by a more general licence. The system involves proper notification of an event to the licensing authority and the police. Provided the applicable number of temporary event notices has not been exceeded and the police do not intervene, the event is automatically permitted. Temporary event notices can only be given in respect of any particular premises 12 times in a calendar year and the period for which each event lasts must not exceed 96 hours.

**[33]** Section 181 provides for appeals to be made against decisions of the licensing authority to a Magistrates' Court which is, of course, how the decisions in relation to which judicial review is sought in this case came to be made.

#### *THE DETAIL OF THE CLAIM*

**[34]** The Claimant submits that in making its decision to allow the appeal in relation to the premises licence, the Magistrates' Court failed in a number of respects to take account of the changes that the new licensing regime has made and failed to adopt the approach required by the Act. It is further submitted that the magistrates failed properly to consider and take into account the Guidance.

**[35]** There is no doubt that the Guidance is relevant in the magistrates' decision making. As I have set out above, s 4(3) requires the licensing authority to "have regard" to the Guidance. By extension, so must a Magistrates' Court dealing with an appeal from a decision of the licensing authority. The Guidance says:

"10.8 In hearing an appeal against any decision made by a licensing authority, the Magistrates' Court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case."

**[36]** Mr Pickup submits that although the Guidance is not binding and local variation is expressly permitted, it should not be departed from unless there is good reason to do so.

**[37]** Mr Flood for the First Interested Party submits that the Guidance simply serves to provide information for the magistrates and provided that they have had regard to it, that is sufficient. He also points out that, in

some respects (as is clear from the wording of the Guidance), the Guidance is a statement of Government belief rather than proved fact. Inviting attention to the judgment of Beatson J in *J D Weatherspoon plc v Guildford Borough Council* [2006] EWHC 815 (Admin), [2007] 1 All ER 400, [2006] LGR 767, he identifies that different policy elements in the Guidance may pull in different directions in a particular case, flexibility and customer choice potentially conflicting with the need to prevent crime and disorder. He submits that provided that the magistrates consult the Guidance, they do not need to use it as "a decision making matrix that the deciding Court has to sequentially address in making its decision in the manner it would if considering a section of a statute".

**[38]** There is no doubt that regard must be had to the Guidance by the magistrates but that its force is less than that of a statute. That is common ground between the parties. The Guidance contains advice of varying degrees of specificity. At one end of the spectrum, it reinforces the general philosophy and approach of the Act. However, it also provides firm advice on particular issues, an example being what could almost be described as a prohibition on local authorities seeking to engineer staggered closing times by setting quotas for particular closing times. I accept that any individual licensing decision may give rise to a need to balance conflicting factors which are included in the Guidance and that in resolving this conflict, a licensing authority or Magistrates' Court may justifiably give less weight to some parts of the Guidance and more to others. As the Guidance itself says, it may also depart from the Guidance if particular features of the individual case require that. What a licensing authority or Magistrates' Court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight, whether because it does not agree with the Government's policy or its methods of regulating licensable activities or for any other reason. Furthermore, when a Magistrates' Court is entitled to depart from the Guidance and justifiably does so, it must, in my view, give proper reasons for so doing. As para 2.3 of the Guidance says in relation to the need for licensing authorities to give reasons:

"When [departing from the Guidance], licensing authorities will need to give full reasons for their actions. 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."

This is a theme to which the Guidance returns repeatedly and is a principle which must be applicable to a Magistrates' Court hearing an appeal as it is to a licensing authority dealing with an application in the first instance. I agree with Mr Flood for the First Interested Party that 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.

**[39]** In this case, Mr Pickup submits that proper attention to the Guidance would have helped the magistrates to come to a correct and reasonable decision and that they have failed to adhere to it without proper reason and failed to carry out their licensing function in accordance with the Act.

**[40]** The foundation of the Claimant's argument is that the Act expects licensable activities to be restricted only where that is *necessary* to promote the four licensing objectives set out in s 4(2). There can be no debate about that. It is clearly established by the Act and confirmed in the Guidance. For example, in the Act, s 18(3)(b), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must "take such of the steps mentioned in sub-s (4) (if any) as it considers necessary for the promotion of the licensing objectives" (the steps in sub-s (4) include the grant of the licence subject to conditions). Section 34(3)(b), dealing with the determination of an application to vary a premises licence, is in similar terms. The Guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is *necessary* to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example para 7.5 and also para 7.17 which includes this passage:

"Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that

purpose."

**[41]** The Guidance also refers a number of times to the need for regulation to be "proportionate". This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being "necessary", it must in my view be confined to that which is "proportionate" and one can understand why the Guidance spells this out.

**[42]** Mr Pickup submits, and I accept, that the Act anticipates that a "light touch bureaucracy" (a phrase used in para 5.99 of the Guidance) will be applied to the grant and variation of premises licences. He submits that this means that unless there is evidence that extended hours will adversely affect one of the licensing objectives, the hours should be granted. A prime example of this arises when an application for a premises licence is made and there are no relevant representations made about it. In those circumstances, s 18(2) obliges the licensing authority to grant the licence and it can only impose conditions which are consistent with the operating schedule submitted by the Applicant. Mr Pickup says that such a light touch is made possible, as the Guidance itself says, by providing a review mechanism under the Act by which to deal with concerns relating to the licensing objectives which arise following the grant of a licence in respect of individual premises. He invites attention also to the existence of other provisions outside the ambit of the Act which provide remedies for noise, for example the issue of a noise abatement notice or the closure of noisy premises under the Anti-Social Behaviour Act 2003. The Guidance makes clear that the existence of other legislative provisions is relevant and may, in some cases, obviate the need for any further conditions to be imposed on a licence. Paragraph 7.18 from the section of the Guidance dealing with attaching conditions to licences is an illustration of this approach:

"7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the Applicant, no additional conditions at all are needed to promote the licensing objectives."

**[43]** The Guidance includes a section dealing with hours of trading which the Claimant submits further exemplifies the philosophy of the Act. It begins with para 6.1 which reads "This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply."

**[44]** It continues:

"6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.

6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions."

**[45]** The Claimant submits that in imposing shorter hours than it requested for the supply of alcohol and for entertainment, the magistrates went beyond that which was necessary for these premises and failed to take into account that, as the Guidance explains, longer opening times would in fact reduce the potential for problems arising from licensed premises whereas curtailing operations could run counter to the licensing

objectives.

**[46]** The magistrates' Reasons record their acceptance that there had been no reported complaint in regard to public nuisance and that the extended hours had operated without any incidents. The magistrates also record in the Reasons, as I have already said, that they had attached little or no weight to the statements from witnesses of the Appellant. Nothing is said about difficulties mentioned in evidence by the witnesses. As it was clearly incumbent on the magistrates at least to advert in broad terms to those matters that they took into account, it is fair to conclude in the circumstances that they proceeded upon the basis that there was no reliable evidence of actual problems linked to the premises either under the old licence or under the new revised licence. This was in line with the oral evidence of Police Sergeant Yehya (as recorded in the rather truncated notes of the legal advisor):

"1. reported incident for the site. No other incidents or complaints have been received. There are none in my file. There are no incidents we can directly link to the Saughall Hotel since previously open. There have been incidents locally but not linked to these premises."

**[47]** To judge by the Reasons therefore, what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems. The First Interested Party observes that the manager of the premises had given evidence that he intended in the summer to "make hay while the sun shines" and submits, correctly in my view, that the magistrates were entitled to take this apparent change of emphasis into account. However, Mr Flood further submits that the evidence of what had happened in the winter months was therefore of "little evidential value" in determining what was likely to happen in the future and I cannot wholly agree with him about this. Undoubtedly the fact that the Claimant intended in future to make more use of the extended hours reduced the value of the premises' past record as a predictor of the future but it could not, in my view, be completely discarded by the magistrates. They still had to take into account that there had been extended hours for some months without apparent problems.

**[48]** It is plain that the magistrates' particular concern was "migration" rather than problems generated by those coming directly to the premises for their evening out. Under the heading "The Four Licensing Objectives", they say that they accept that there have been no formal or recorded complaints against the premises "but feel that because of the concept of migration that public nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the Local Authority". Under the heading "Migration/Zoning" they begin:

"The Saughall Hotel due to its location and the fact that a number of license premises in the surrounding area have reduced hours to that of the Saughall Hotel we believe that as a consequence of this would be that customers would migrate from these premises to the Saughall Hotel. [sic]"

and end:

"We appreciate that the extended hours have been in operation for several months without any incidents but have taken into consideration this was during the Winter months and inevitable numbers will increase in the Summer causing nuisance/criminality."

**[49]** They reiterate their concern under the heading "Nuisance (Existing/Anticipated)" saying that they "feel that public nuisance will be inevitable".

**[50]** The Claimant complains that the magistrates' treatment of the issue of "migration" was fundamentally flawed on a number of grounds.



**[51]** Firstly, it submits that there was no evidence on which the magistrates could find that customers *would* come to the premises when other premises in the vicinity closed or cause trouble and their concerns were no more than inappropriate speculation. The Claimant's position was that there was no evidence of migration to their premises. There were no recorded complaints of any kind about the premises let alone specifically about migration. Ms Lesley Spencer who lives opposite the premises and is the Secretary of the Saughall Massie Conservation Society gave evidence of her fear that customers would migrate but said that she did not think there had been any migration.

**[52]** Apart from their own local knowledge, the only material on which the magistrates could possibly have formed their views about migration was what Police Sergeant Yehya said in evidence. According to the legal advisor's notes, whilst being cross-examined by Mr Kirwan, the sergeant gave evidence about the other licensed premises operating in the vicinity (which I have seen marked on a local map and which were within walking distance of the premises) and their closing hours and said that there were three assaults each week at one of the premises. The legal advisor records that he also said:

"We have staggered closing. This could cause problems it has the potential to cause difficulties in the area. I have a list of considerations but none would rank as high as crime, not even noise. No complaints have been made to me even regarding noise. One concern was dispersal. We gave people one hour to disperse and therefore reduced from 2.00am to 1.00am. 1.00am closing at 2. 280 people leaving premises. Other premises subject to high levels of crime *migration not an issue.*" [my italics]

**[53]** I appreciate that this evidence acknowledged that staggered closing *could* cause problems but, had migration been a significant issue as opposed to a mere possibility, one can, I think, assume that the police would have made representations on that score, particularly given that they had plainly considered the impact of trading hours specifically and *had* initially objected to the even longer hours originally proposed by the Claimant. It is noteworthy that even when they were in opposition to the plans, it was never on the basis of migration of disruptive characters from other licensed premises and always simply on the basis of late noise from ordinary customers of the premises dispersing. The absence of police objections before either the licensing authority or the Magistrates' Court seems to have surprised the magistrates who said so in their Reasons, commenting "We were surprised that the Police originally objected to the application but withdrew that objection after a slight variation of the terms." In so saying, they convey, in my view, not only their surprise about the Police approach but also their disagreement with it.

**[54]** It was not open to the magistrates, in my view, to elevate what Sergeant Yehya said in the witness box to evidence that a problem with migration could reasonably be expected, nor do they say anything in their reasons which suggests that they did rely on his evidence in this way. The only concerns about migration were therefore the magistrates' own with perhaps some fears expressed by local residents though not on the basis of firm historical examples of migration to the premises.

**[55]** It is clear from the Guidance that drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds. These magistrates did recognise the absence of police objections which caused them surprise and they chose to differ from the police in reliance on their own views. The Claimant submits that in so doing they departed into the realms of impermissible speculation not only in concluding that there would be migration but also in concluding that in this case it would generate nuisance and disorder. The First Interested Party is correct in submitting that the Guidance accepts a link between migration and a potential breach of the licensing objectives but it is also clear from the Guidance that each case must be decided on its individual facts so the magistrates could not simply assume that if people came from other premises, there would be

trouble.

**[56]** The Claimant complains that the magistrates' treatment of the migration issue also flies in the face of the Guidance because firstly it was an improper attempt to implement zoning and secondly it ignored the general principle of longer opening hours.

**[57]** Zoning is the setting of fixed trading hours within a designated area so that all the pubs in a given area have similar trading hours. The problem created by it, as demonstrated by experience in Scotland, is that people move across zoning boundaries in search of pubs opening later and that causes disorder and disturbance. The Guidance says, at para 6.8:

"The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times."

It stresses that above all, licensing authorities should not fix predetermined closing times for particular areas.

**[58]** I am not convinced that the magistrates' limiting of the Claimant's operational hours can properly be described as implementing zoning which, in my view, is a term that is more appropriate to describe a general policy imposed by a licensing authority for a defined area than an individual decision of this type, albeit made with reference to the opening hours of other premises in the vicinity and having the effect of imposing the same hours as those premises.

**[59]** What has more weight, however, is the Claimant's submission that the magistrates failed to give proper weight to the general principle of later opening hours and to the intention that the approach to licensing under the Act would be to grant the hours sought for the premises unless it was necessary to modify them in pursuit of the licensing objectives. The Reasons include a heading "Flexibility" under which the magistrates say simply "We have considered the concept of Flexibility." In so saying, they may be referring to the sort of flexibility to which reference is made, for example, in para 6.6 of the Guidance (see above) but their shorthand does not enable one to know to what conclusions their consideration of the concept led them in this case nor whether they had reliably in mind that the starting point should be that limitations should not be imposed upon the licence sought unless necessary to promote the licensing objectives rather than that the licensing authority or the court should form its own view of what was necessary for the premises and only grant that.

**[60]** The Claimant was seeking to have the freedom to open later on certain occasions when the trade justified it or, as the magistrates put it, "the application for extended hours was to allow *flexibility* to open later on certain occasions". As the First Interested Party would submit, the magistrates may have inferred from Mr Miller's comment about making hay that the premises would *often* be open late rather than this happening only infrequently in accordance with the picture presented to the licensing authority. If this was their inference, however, it is odd that they considered that the Claimant could deal with the position by applying for a temporary certificate because this would have allowed the premises to open later on only a limited number of occasions. They make no express finding in their Reasons as to the frequency on which they considered the Claimant intended to keep the premises open late. This was material not only to the degree of disturbance that might be caused generally by late opening but also specifically to the issue of whether there would be migration. It would seem unlikely that customers from nearby pubs would bother to walk or even drive to the Saughall Hotel in search of another drink at the end of their evenings unless the Saughall Hotel was open late sufficiently frequently to lead them to a reasonable expectation that their journey would be worthwhile.

**[61]** The magistrates' comment about the temporary certificate also seems to me to be an example of a

failure by them to adopt the lighter approach that the Act dictated and to allow flexibility to those operating licensed premises unless the licensing objectives required otherwise. Temporary certificates would be a cumbersome and restricted means of achieving flexibility, not responsive to the day to day fluctuations in business, only available a limited number of times, and not in line with the philosophy of the Act.

**[62]** There is no consideration in the magistrates' decision of whether the imposition of conditions to control noise or other nuisance (which were going to be imposed) would be sufficient to promote the licensing objectives without reducing the operating hours of the premises. Given that the Act dictates that only such steps as are necessary should be taken with regard to the variation of the terms of operation sought, such consideration was required.

#### *MY OVERALL CONCLUSIONS*

**[63]** It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not *articulate* that the curtailment of the hours sought was "necessary" to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be "an inevitable consequence" of leaving the hours as granted by the Local Authority. However, in my view their approach to what was "necessary" was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.

**[64]** I have said little so far about what appears in the magistrates' response for the judicial review proceedings. The various documents comprising the response did nothing to allay my concerns about the magistrates' decision. Indeed quite a lot of what was said reinforced my view that the magistrates had largely ignored the evidence and imposed their own views. They refer in their response to incidents about which the residents had given evidence and to the residents not having complained formally for various reasons, for example because it was Christmas or because there was thought to be no point. If the magistrates considered these matters to be relevant, it was incumbent on them to say so clearly in their reasons whereas they there recorded their acceptance that there had been no formal or recorded complaints, that the extended hours had been in operation for several months without incidents and that they had attached little or no weight to the statements of the witnesses of the Appellant. They also refer extensively in their response to their thoughts on migration, including that people may come from further afield than the pubs in the vicinity in cars. Particularly concerning is that they refer repeatedly to a perceived issue over police resources which is not something that, as far as I can see, had been raised by Sergeant Yehya or explored with him in evidence. Mr Beere says in his statement for example, ". . . there is also the question of Police resources and

their ability to effectively police this area especially at weekends with already stretched resources being deployed in Hoylake."

[65] Reference is made in the response documents to the court feeling that the Brewery's proposed opening hours contradicted the acceptable activities of a family pub and that the Saughall Hotel is "a village pub and not a night spot in the centre of town". For the court to take matters such as this into account seems to me to be an interference with the commercial freedom of the premises of a type that was not permissible under the Act unless it was necessary to promote the licensing objectives. I appreciate that the magistrates' response seems to suggest that they feared that a different type of customer was being courted or would invite themselves once it got too late for families but this does not seem to have been founded on anything that was given in evidence so was really not much more than speculation.

[66] Mr Beere's statement ends with a reference to the Brewery wanting to make hay while the sun shines, of which he says, "I believe that this statement was indicative of the Brewery's attitude to local residents and to the general management of the premises." Given that problems with or in the vicinity of the premises had been almost non-existent and that the magistrates had not seen fit to make reference in their Reasons to any difficulties caused by the Hotel, it is hard to see how this belief could be justified but it does perhaps exemplify the approach of the magistrates.

[67] I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in s 17(4) and these include not only the times when it is proposed that the licensable activities are to take place but also "any other times during which it is proposed that the premises are to be open to the public". On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the Applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the Applicant to ensure the promotion of the licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

#### *THE COSTS ARGUMENT*

[68] In the light of my conclusion that the magistrates' decision is unlawful and therefore must be quashed, it is not appropriate for me to consider the arguments in relation to their costs order further. The Appellants had given an undertaking to the Licensing Authority that they would not seek costs against the Licensing Authority and they sought the entirety of their costs of the appeal from the Claimant. The magistrates granted that order and the Claimant submits that that was not an order that was open to them. Whatever the merits of that argument, the magistrates' order in relation to costs cannot now stand. The basic foundation for the

order for costs was that the appeal had succeeded and the Claimant had lost. That position has now been overturned and the costs order must go along with the magistrates' main decision. The magistrates would have had no reason to grant costs against the Claimant if the appeal had been dismissed.

*Appeal dismissed.*

Judgments

**QBD, ADMINISTRATIVE COURT**

Neutral Citation Number: [2016] EWHC 1265 (Admin)

CO/345/2016

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**THE ADMINISTRATIVE COURT**

Royal Courts of Justice

Strand

London WC2A 2LL

Thursday, 14 April 2016

**B e f o r e:**

**MR JUSTICE JAY**

**Between:**

**EAST LINDSEY DISTRICT COUNCIL**

**Appellant**

v

**ABU HANIF**

**(TRADING AS ZARA'S RESTAURANT AND TAKEAWAY)**

**Respondent**

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(Official Shorthand Writers to the Court)

**Mr P Kolvin QC & Mr D Dadds** (instructed by David Dadds LLP) appeared on behalf of the **Appellant**

The **Respondent** did not appear and was not represented

J U D G M E N T

(Approved)

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1. MR JUSTICE JAY: This is an appeal by way of case stated from the decision of the Lincoln Magistrates' Court, District Judge Veits, given on 23 June 2015, whereby he allowed an appeal from the revocation of a premises licence by the licensing authority.
2. The appellant, the East Lindsey District Council, is the licensing authority. The Magistrates' Court in the usual way is not a party to these proceedings. The respondent, Mr Abu Hanif, trading as Zara's Restaurant and Takeaway, is the licence holder. He through a licensing consultant has submitted correspondence making various limited points, but indicating that he would not be taking any part in these proceedings.
3. The premises in question are Zara's Restaurant and Takeaway situated in North Summercoates on the Lincolnshire coast. They are licensed to sell alcohol ancillary to the supply of food. The restaurant is owned and managed by the licensee, Mr Hanif. On 29 April 2014, the premises were the subject of a joint visit by the police and immigration officers, and it was discovered that Mr Miah was working in the kitchen as a chef. It was common ground that Mr Miah had no current entitlement to remain in the UK, let alone to work. I was told that he arrived here illegally some years ago. Furthermore, it was also accepted by the respondent that he (i) employed Mr Miah without paperwork showing a right to work in the United Kingdom; (ii) paid Mr Miah cash in hand; (iii) paid Mr Miah less than the minimum wage; (iv) did not keep or maintain PAYE records; (v) purported to deduct tax from Mr Miah's salary; and (vi) did not account to HMRC for the tax deducted.
4. The police then applied for a review of the respondent's licence under section 51 of the Licensing Act 2003 and the matter came before the appellant's subcommittee on 30 June 2014. The subcommittee decided to revoke the respondent's licence. Its reasons were as follows:
5. "The subcommittee were satisfied that Mr Hanif did not take the appropriate checks of staff members having knowledge that there were problems previously at the other premises with overstayers, and that he continued to allow staff to work at Zara's restaurant without making appropriate checks.
6. The subcommittee were satisfied that Mr Hanif had not undertaken the relevant checks to ensure the employee concerned was eligible to work in the United Kingdom. Instead of not allowing employees to work if they had not provided the correct documentation he allowed them to work and paid cash in hand. With all this in mind the subcommittee were satisfied that Mr Hanif had knowingly employed person/s unlawfully in the United Kingdom.



7. The subcommittee considered the evidence by Mr Kheng on behalf of Mr Hanif and the Home Office section 182 Guidance to Licensing Authorities. The subcommittee were of the view that the premises licence should be revoked and that revocation was an appropriate step with a view to promoting the crime prevention licensing objective."
8. The respondent then appealed to the Magistrates' Court. There was a hearing on 27 March 2015, and on 23 June the district judge decided to allow the respondent's appeal. On 1 September 2015, the district judge determined the issue of costs and on 7 January 2016 he stated the case. The appeal to the district judge was de novo, but he accepted that he could only allow the appeal if the subcommittee's decision was "wrong", the burden being on the appellant before him to establish that.
9. Looking now at the stated case, the district judge noted that the respondent had received a civil penalty for employing an illegal worker under section 15 of the Immigration, Asylum and Nationality Act 2006. An immigration officer gave evidence to the effect that although by virtue of section 21 a criminal offence was committed, such proceedings were rarely brought. The district judge also noted that the police and the Council's licensing officer were no longer saying that the respondent was a serial offender, but a redacted report which was placed before the subcommittee still gave the impression that he "was in a much worse position than he actually was". As for the failure to pay the minimum wage, the district judge said this:
  - A. "In his evidence before me Mr Hanif accepted that he had not paid the minimum wage and this in itself can be a criminal offence. I found that this was not the main basis of the subcommittee's decision however and again there was no evidence that he had been reported for that alleged offence. It would appear from their reasons that the subcommittee used the evidence of paying cash in hand as justification for the finding that he knowingly employed Mr Miah. The prosecuting authority however appear to have taken a different view in offering the civil penalty."
10. The district judge's core reasoning was that no crime had been committed. As he put it:
  - A. "It appeared to me that no crime had been committed as a result of the visit to the premises in April of last year. A civil penalty had been imposed rather than prosecution for the section 21 offence and no other crime had been reported in relation to not paying the minimum wage."
11. In the district judge's view, the crime prevention objective was not engaged.
12. The district judge also criticised the subcommittee for adopting an inconsistent approach because in other similar cases only warnings were issued. Finally, he considered that the subcommittee may have been influenced by comments in the police report, leading them to believe that they were dealing with a serial offender.

13. At the conclusion of the stated case, the district judge posed two questions for my determination. I will address these at the end of my judgment.
14. I was taken by Mr Philip Kolvin QC to various provisions of the Licensing Act 2003 as amended. Under section 4(1)and(2) a licensing authority must carry out its licensing functions with a view to promoting the licensing objectives, which include "the prevention of crime and disorder". The provisions dealing with the review application brought by the police are contained in sections 51 and 52. Under section 52(3), the licensing authority (and on appeal the Magistrates' Court):
  - A. "... must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives."
15. The epithet "appropriate" was introduced by amendment in 2011. Previously the test had been stricter. In my judgment, it imports by necessary implication the concepts of proportionality and relevance.
16. Mr Kolvin submitted that the district judge erred in a number of respects. First, he wrongly held that, given that criminal proceedings were never brought, the crime prevention objective (see section 4(2)) was not engaged. The statute is concerned with the prevention rather than the fact of crime. Secondly, and in any event, the interested party had committed criminal offences in relation to tax evasion, the employment of an illegal worker, and employing an individual at remuneration below the minimum wage. As for the employment of an illegal worker, Mr Kolvin accepted that this requires knowledge on the part of the employer, and he also accepted that it is not altogether clear whether the district judge found as a fact that the respondent possessed the requisite knowledge. However, the core question is the promotion of the licensing objectives, not the fact of anterior criminal activity, and in this regard a deterrence approach is appropriate.
17. Thirdly, Mr Kolvin submitted that there was no evidence of an inconsistent approach by the subcommittee in giving warnings in some cases because all cases turn on their own facts. Finally, Mr Kolvin submitted that there was no basis for the district judge's conclusion that the subcommittee may have been influenced by a suggestion that the respondent was a serial offender.
18. I accept Mr Kolvin's submissions. In my view the district judge clearly erred. The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder.

This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on

the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. The district judge's erroneous analysis of the law precluded any proper consideration of that issue. In any event, I agree with Mr Kolvin that criminal convictions are not required.

19. To the extent that the analysis must be retrospective, the issue is whether, in the opinion of the relevant court seized of the appeal, criminal offences have been committed. In the instant case they clearly had been: in relation to tax evasion (see the common law offence of cheating the Revenue and the offence of fraudulent evasion of tax contrary to section 106A of the Taxes and Management Act 1970); and the employment of Mr Miah at remuneration below the minimum wage (see section 31 of the National Minimum Wage Act 1998). Moreover, given the evidence that Mr Miah never provided the relevant paperwork, notwithstanding apparent requests, the obvious inference to be drawn is that the respondent well knew that he could not, and that no tax code and National Insurance number had been issued. The corollary inference in my judgment is that the respondent well knew that Mr Miah could not provide the relevant paperwork because he was here illegally.
20. I also accept Mr Kolvin's submission that each case must turn on its own facts. As a matter of law, unless it could be said that some sort of estoppel or related abuse of process arose in the light of warnings given in other cases, the alleged inconsistent approach led nowhere. In my judgment, it could not be so said.
21. Finally, I agree with Mr Kolvin that there is nothing in the point that the subcommittee could have been misled about the interested party being a serial offender. The point that the subcommittee was making was the fact that the respondent had worked at premises where illegal workers were also employed meant that he should have been vigilant to the issue.
22. Thus the answer to the district judge's two questions are as follows:
  - A. Q. "Was I correct to conclude that the crime prevention objective was not engaged as no crimes had been proceeded with, the appellant only receiving a civil penalty?"
  - B. No.
  - C. Q. "Was I correct in concluding that the respondent had been inconsistent in similar decisions in not revoking the licence [sic]?"
  - D. No.

23. Having identified errors of law in the district judge's decision, the next issue which arises is whether I should remit this case for determination in the light of my ruling or whether I have sufficient material to decide the issue for myself. I should only adopt the latter course if satisfied that the issue is so obvious that no useful purpose would be served by remission. I am so satisfied. Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked. Another way of putting the matter is that the district judge had no proper basis for overturning the subcommittee's assessment of the merits.
24. It follows in my judgment that the only conclusion open to the district judge in the present case was to uphold the revocation of the respondent's licence. This appeal must be allowed and the respondent's licence must be revoked.
25. MR KOLVIN: My Lord, I'm very grateful. Can I deal with the question of costs, both here and below.
26. MR JUSTICE JAY: Yes.
27. MR KOLVIN: Should I start with here.
28. MR JUSTICE JAY: Yes.
29. MR KOLVIN: My Lord, we would ask for the costs before this court. I just want to pray in aid four very brief points. The first is the result. The second is that the district judge's approach was expressly urged on him by the respondent's legal team. Thirdly, that the respondent was expressly urged to concede this appeal to stop costs running, he was given that opportunity at pages 42 and 43 of the bundle. Fourthly, perhaps a little bit tugging at the heart strings, but there's no reason why the Council Tax payers of East Lindsey should bear the cost of establishing what has been established in this court. So we would ask for the costs up here.
30. There is a schedule and the schedule has been served upon Mr Hanif by letter dated 16 March of 2016. I don't know whether the schedule has found its way to my Lord, if not I can hand up a copy.
31. MR JUSTICE JAY: It has.
32. MR KOLVIN: It has. My Lord, I can see that VAT has been added on. It doesn't need to be because of course the Council can retrieve the VAT, so my application is for £16,185. I know there's not a lot of explanation around my fee, but it was

taken on a single fee for all work involved in relation to the case stated; advice, the skeleton argument and attendance today, so it's one single - -

33. MR JUSTICE JAY: What about your junior's fees?
34. MR KOLVIN: My learned junior is also my instructing solicitor, he wears two hats.
35. MR JUSTICE JAY: I see.
36. MR KOLVIN: He has his own firm which is Dadds LLP, and he is also a member of the bar, so although he has appeared as my junior, his fee is wrapped up in the solicitors' fees set out in the schedule.
37. MR JUSTICE JAY: Okay. What about the costs below?
38. MR KOLVIN: My Lord, I'm just trying to ascertain what the position is.
39. MR JUSTICE JAY: I thought there was no order for costs below.
40. MR KOLVIN: There was no order for costs below, that was on the basis that the appeal had been allowed. The situation in relation to costs of licensing appeals are set out in section 181 of the Act, which enables the court to make such order as it thinks fit. Normally when appeals are dismissed there is no real question about it, costs follow the event. When appeals are allowed, some further considerations come into play, which are expressed by the Master of the Rolls in a case which you may have come across called City of Bradford v Booth, which is the case where the Master of the Rolls said that local authorities shouldn't be put off from trying to make honest and reasonable decisions in the public interest. And so one has to take account additionally of the means of the parties and their conduct in relation to the dispute, but in this case of course the appeal has now been dismissed, and so we would say that the ordinary rule is that the costs should follow the event, the appeal having failed. I'm just trying to ascertain whether schedules were ever served below, in the light of the way the case came out. **(Pause)**
41. My Lord, I'm really sorry that we don't actually have the schedule here, apparently it was £15,000. If you were minded to order costs below the options are either I suppose to wait and we will have the thing emailed up, or to say, "Look, it was below, it's a little bit more complex, they should be assessed if not agreed."
42. MR JUSTICE JAY: This is going to wipe him out, isn't it?
43. MR KOLVIN: Well he has already said, I have to say, I'm just telling you frankly what I've been told this morning, that when the bundles and the schedules were

served on him, he had clearly read them, but he said, "If you win in the High Court and get costs against me, then I'm just going to declare myself bankrupt." So there may well be a bit of football(?) about this, but nonetheless it was his appeal, his team raised a point which in retrospect was very surprising, and caused an awful lot of costs to be incurred.

44. MR JUSTICE JAY: Yes. Well I am going to assess the costs here in the round figure of £15,000.

45. MR KOLVIN: Thank you.

46. MR JUSTICE JAY: If there was a schedule, which you tell me there was, below, it is proportionate that I assess those costs rather than put you to the trouble of a detailed assessment, so if you could have that emailed to my clerk in due course, I will assess the costs below.

47. MR KOLVIN: Thank you, my Lord.

48. MR JUSTICE JAY: On the basis of that schedule.

49. MR KOLVIN: We're not trying to be too ambitious, but we would like to see what we can - -

50. MR JUSTICE JAY: I'll take a broad brush approach to that.

51. MR KOLVIN: Thank you.

52. My Lord, the only other thing to mention is that this isn't the only case which is kicking around the east of England where licensing subcommittees are being urged to take no action because there has been no prosecution in these immigration cases. Although I appreciate that this is hardly stellar law making, it's an application of pretty well established legal principles to the facts, I'm asking whether my Lord would be minded to certify this so that we can adduce the authority in other cases, because it's a clear statement of the law that there doesn't need to have been a prosecution. So with the practice direction in mind, would my Lord be minded to - -

53. MR JUSTICE JAY: Just remind me of the practice direction.

54. MR KOLVIN: Yes, can I hand it up?

55. MR JUSTICE JAY: Yes. **(Handed)**

56. MR KOLVIN: If Mr Hanif had come I wouldn't need to make the application. It's paragraph 6.1. The judgment has to clearly indicate that it purports to establish a new principle or extends the present law and that has to take the form of an express statement to that effect, and then 6.2 says what categories of judgment we're dealing with, which include applications attended by one party only.
57. So that's the situation we're in. In reality these judgments get around anyway, because we're dealing with administrative tribunals and not courts, but sometimes the point is taken, "Ah yes, but the court didn't certify".
58. MR JUSTICE JAY: But where's the new principle I've established?
59. MR KOLVIN: My Lord, what you have said clearly, which hasn't been said before, by dint of the fact that not many licensing cases reach the lofty heights of this building, is that there does not need to have been a prosecution in order for the crime to have - -
60. MR JUSTICE JAY: Oh, I see. Well that's so obvious it almost goes without saying, that's why it hasn't been said before.
61. MR KOLVIN: My Lord, it was obvious to everyone except the district judge, the appellant and other licensees in the east of England.
62. MR JUSTICE JAY: Okay.
63. In terms of the logistics, if you want a copy of the judgment, don't you have to pay for it?
64. MR KOLVIN: We may have to, and we would be obviously very pleased to do so.
65. MR JUSTICE JAY: Because I'm not sure that all judgments are, in the Administrative Court, they're not all transcribed and published.
66. MR KOLVIN: That is correct, and I have no doubt that my client would be - this isn't a matter about the costs of the judgment.
67. MR JUSTICE JAY: No, fortunately it doesn't cost that much. But I will give the certification. I have never been asked to do so before, I must confess.
68. MR KOLVIN: Yes.

69. MR JUSTICE JAY: Because these cases are referred to almost willy nilly, if they're available on Lawtel or wherever.
70. MR KOLVIN: Yes, they are.
71. MR JUSTICE JAY: Then they're just provided.
72. MR KOLVIN: They get into the textbooks and they - -
73. MR JUSTICE JAY: No- one objects.
74. MR KOLVIN: Yes. It has happened once before, in relation to the meaning of the Court of Appeal judgment in Hope and Glory, and Lindblom J, as he then was, was asked repeatedly would he certify in relation to the meaning of Hope and Glory, which is an important test, and he was pretty engaged in the practice direction. But since then that judgment, there's always an argument in court about whether it can be cited or not. The difference between licensing and some other fields of law is that very few cases reach here, so when they do, the judgments of High Court judges are gold dust.
75. MR JUSTICE JAY: Yes, well I'm happy to make the certification.
76. MR KOLVIN: Thank you very much indeed.
77. MR JUSTICE JAY: We wouldn't want this point to be taken again successfully.
78. MR KOLVIN: No.
79. MR JUSTICE JAY: Now as a matter of courtesy, is the judgment, once available, sent to the district judge, or is it something that I should do informally?
80. MR KOLVIN: I don't know, my Lord, what the normal practice is. I don't think that I have previously been on a legal team which has sent judgments, but we're very happy to undertake to do so.
81. MR JUSTICE JAY: Yes, I think if you're going to get a copy, obviously you're going to send it to the respondent - -
82. MR KOLVIN: Indeed.



83. MR JUSTICE JAY: - - so he can ingest it. I think you should send it to the district judge, just saying that the judge directed that out of courtesy he should see it.
84. MR KOLVIN: We're very happy to do that. Thank you very much indeed.
85. MR JUSTICE JAY: Thank you very much.

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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## Schedule of Licence Conditions

Conditions consistent with the operating schedule	Agreed	Proposed by
<ul style="list-style-type: none"> <li>• There are CCTV cameras which capture footage from outside the shop. The shop is situated in the city centre, yards away from nightclubs/pubs/bars, which are manned by security and bouncers. To prevent crime, my staff will not be selling alcohol to individuals who are overly intoxicated. My staff members have alcohol hospitality licences and extensive experience in this field. Alcohol will be sold through a hatch after 11pm and buyers would not be permitted to consume alcohol in or near the premises. We would also ensure that alcohol is not sold to individuals or groups in overly large quantities.</li> <li>• Managing site address, limiting the sale of alcohol to responsible individuals, CCTV surveillance, adequate lighting around the premises.</li> <li>• We will not be selling large quantities of alcohol to groups or individuals, and we would not be selling alcohol to individuals who are overly intoxicated.</li> <li>• During the proposed hours there are no children present near the location</li> </ul>	N/A	Applicant
Conditions proposed by objectors	Agreed	Proposed by
<p><b>Amendment to hours</b></p> <p>Hours for sales of alcohol finish at 0100 each day</p> <p><b>Agreed conditions</b></p> <ol style="list-style-type: none"> <li>1. The premises will close to the public at 11pm and all sales after this time will be via a hatch.</li> <li>1. The premises shall install and maintain a comprehensive digital colour CCTV system. All public areas of the licensed premises, including all public entry and exit points and the street environment will be covered, enabling facial identification of every person entering in any light condition. The CCTV cameras shall continually record whilst the premises are open to the public and recording shall be kept available and unedited for a minimum of 28 days with the date and time stamping. A staff member who is conversant with the operation of the CCTV system shall be present on the premises at all times when they are open to the public and must be able to produce / download / burn CCTV images upon request by a police officer or an authorised officer of the licensing authority. Any footage must be in a format so it can be played back on a standard personal computer or standard DVD player. Where the recording is on a removable medium (i.e. compact disc, flash card etc.), a secure</li> </ol>	Yes (all)	GMP

## Schedule of Licence Conditions

<p>storage system to store those recording mediums shall be provided.</p> <p>3. An incident log (which may be electronically recorded) shall be kept at the premises for at least six months, and made available on request to the Police or an authorised officer of the licensing authority, which will record the following incidents including pertinent details:</p> <ul style="list-style-type: none"> <li>(a) all crimes reported to the venue, or by the venue to the Police</li> <li>(b) all ejections of patrons</li> <li>(c) any incidents of disorder</li> <li>(d) any faults in the CCTV system or searching equipment or scanning equipment</li> <li>(e) any refusal of the sale of alcohol</li> <li>(f) any visit by a relevant authority or emergency service</li> </ul> <p>4. The Designated Premises Supervisor shall ensure that a written notice of authority is kept at the premises for all staff who sell alcohol. The notice shall be made available for inspection upon request of the police or an authorised officer of the licensing authority and all staff selling alcohol must be in possession of formal identification to enable to verify their identity against the notice.</p> <p>5. The premises shall display prominent signage indicating at any point of sale, the entrance to the premises and in all areas where alcohol is located that it is an offence to buy, or attempt to buy, alcohol for a person under the age of 18.</p> <p>6. In addition to any other training, the premises licence holder shall ensure all staff are trained to prevent underage sales, to be aware of and prevent proxy sales, to maintain the refusals log, enter sales correctly on the tills so the prompts show as appropriate and monitor staff to ensure their training is put into practice. Documented records of training completed shall be kept for each member of staff. Training shall be regularly refreshed and at no greater than 6 monthly intervals.</p>		
None	N/A	Licensing and Out of Hours