

**COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE QUEEN'S BENCH DIVISION  
(ADMINISTRATIVE COURT)  
Mr Justice Burton  
CO/5324/2009**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
26/01/2011

**B e f o r e :**

**THE PRESIDENT OF THE FAMILY DIVISION  
LORD JUSTICE LAWS  
and  
LORD JUSTICE TOULSON**

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**Between:**

**THE QUEEN ON THE APPLICATION OF  
HOPE AND GLORY PUBLIC HOUSE  
LIMITED**

**Claimant/  
Appellant**

**- and -**

**CITY OF WESTMINSTER MAGISTRATES  
COURT**

**Defendant**

**-and-**

**THE LORD MAYOR AND THE CITIZENS  
OF THE CITY OF WESTMINSTER**

**Interested  
Party/  
Respondent**

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**Mr Ian Glen QC and Mr Gordon Bishop (instructed by Jeffrey Green  
Russell) for the Claimant/Appellant  
Mr David Matthias QC and Ms Emma Dring (instructed by Westminster City  
Council) for the Interested Party/Respondents  
The Defendant being neither present nor represented  
Hearing date: 9 November 2010**

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**HTML VERSION OF JUDGMENT**

**Lord Justice Toulson delivered the judgment of the Court:**

**Introduction**

1. This appeal raises a question about how a magistrates' court hearing an appeal from a decision of a licensing authority under the Licensing Act 2003 ("the Act") should approach the decision.

**Background**

2. The appellant owns the Endurance public house in Berwick Street, Soho. The premises are licensed for the sale and supply of alcohol and for the provision of entertainment and late night refreshment. The licence was granted on 12 March 2007 by Westminster City Council ("the council") as the local licensing authority.
3. On 15 April 2008 the council's Environmental Health Consultation Service ("EHCS") applied under s51(1) of the Act for a review of the licence after complaints were made by residents about the level of noise caused by customers taking their drinks out of the pub and congregating on the street during the evenings.
4. The hearing of the review took place before the council's Licensing Sub-Committee on 26 and 27 June 2008. The sub-committee heard submissions and evidence lasting about 5 hours. It decided to attach a number of conditions to the licence, the main condition being that no customer should be permitted to take drink from the premises in an open container after 6 pm. The decision and the sub-committee's reasons were notified to the appellant's solicitors by a letter dated 4 July 2008. The sub-committee stated:

"We have no policy to ban outside drinking, and we have accordingly not approached the case on that basis. We were not referred to the Council's statement of licensing policy by any party. We have had regard, as we must, to the policy,...but we have reached our decision based on the evidence that has been put before us in relation to these premises, and not on any policy ground.

The application was made on the grounds of public nuisance, and we first consider whether it was established that a public nuisance for the purposes of the Act exists. The evidence we heard was that large

numbers of customers of the Endurance congregate on a daily basis outside the public house in Kemps Court in the evening, the numbers involved ranging from very few (5-10) to very many (180 or more). Those customers drinking and talking outside the premises make a noise. The noise is amplified by the configuration of buildings in the area. The noise causes public nuisance to surrounding residents, including, in particular residents directly opposite the public house.

The licensee argued that the noise was not so bad as to constitute a nuisance and that the complaints...were exaggerated. He called expert evidence in support of that proposition. We are completely satisfied that the noise is indeed a serious nuisance...

A number of local residents and other customers of the premises gave evidence about the way in which the premises were run, and we accept that the premises are valued by its customers and that a number of people enjoy being able to drink outside. We reject however the argument that a licensee has a fundamental right to, in effect, appropriate a part of the public realm for his own commercial purposes, if the effect of doing so is to cause serious public nuisance to his neighbours. Accordingly, we are persuaded that it is appropriate to take steps to prevent that public nuisance from continuing.

We recognise that steps should only be taken where they are necessary and that it cannot be necessary to take disproportionate steps..."

5. The sub-committee then considered the conditions proposed by EHCS and additional conditions proposed by the police. It concluded that most of the proposed conditions were required.
6. The appellant appealed against the decision to the City of Westminster Magistrates Court under s181 and schedule 5 of the Act.
7. At a preliminary hearing on 7 May 2009 District Judge Snow heard argument about how he should approach the decision of the sub-committee on the hearing of the appeal. He held that he was bound by the decision of the Court of Appeal in *Sagnata Investments Limited v Norwich Corporation* [1971] 2 QB 614, in the light of which he ruled:

"I will therefore

- (1) Note the decision of the licensing sub-committee.
- (2) Not lightly reverse their decision.
- (3) Only reverse the decision if I am satisfied it is wrong.
- (4) I will hear evidence.

(5) The correct approach is to consider the promotion of the Licensing Objectives. To look at the Licensing Act 2003, the Guidance made under section 182 LA03, Westminster's Statement of Licensing Policy and any legal authorities.

(6) I am not concerned with the way in which the Licensing Sub-Committee approached their decision or the process by which it was made. The correct appeal against such issues lies by way of Judicial Review."

8. The district judge heard the appeal over 5 days between 11 and 25 June 2009, during which he heard 4 days of evidence, considered 1797 pages of statements and exhibits and visited the site. On 30 June 2009 he delivered a 22 page written judgment. His conclusions in summary were:

"I find, on the balance of probabilities, that given the number of Residents, Students and Teachers affected, and given the geographical spread, that the nuisance clearly is a public nuisance.

...

The evidence is clear, that the public nuisance arises between 6 pm and 11 pm. The conditions imposed by the Licensing Sub-Committee are necessary and proportionate to ensure the promotion of the licensing objectives.

...

On 7 May 2009 I set out that I would only interfere with the decision of the sub-committee if I was satisfied that it was wrong. In fact I am satisfied that it was right. This appeal is dismissed."

9. The appellant applied for judicial review of the district judge's decision on various grounds. The primary argument was that the district judge's ruling about how he should approach the decision of the sub-committee was wrong in law.
10. The appellant's application for permission to apply for judicial review was dismissed by Burton J in a judgment dated 21 July 2009.
11. Permission to appeal was refused by Moses LJ on paper but was granted by Sir Mark Waller after an oral hearing on 19 May 2010. The permission was limited to the single question whether the district judge's self-direction was correct. As to that, Sir Mark Waller observed:

"So far as the direction is concerned, the position may well be covered by the authority *Sagnata Investments Limited v Norwich Corporation* [1971] 2 QB 614, but it seems to me that the question of

whether it is an appropriate direction and the question of whether that is the right way in which a magistrate should approach an appeal in which he is hearing all the evidence de novo is a matter of some importance. We can spend a great deal of time arguing about the arguability of the point and it is better to have a decision which clarifies the position, which at present there is not."

### **Fresh evidence**

12. In addition to the ground on which leave to appeal was granted, Mr Glen QC sought leave on behalf of the appellant to introduce fresh evidence. The purpose of the fresh evidence was to rebut evidence given by a witness, Ms Bailey, at the hearing before the district judge to the effect that noise from the Endurance disturbed lecturers and students at the nearby Westminster Kingsway College. Ms Bailey had provided a witness statement on 15 January 2009, which had been disclosed to the appellant's representatives soon afterwards, i.e. several weeks prior to the hearing before the district judge. The fresh evidence came from others at the college and was obtained in October 2010, i.e. several months after Waller LJ granted limited permission to appeal. We can see no basis on which the late discovery of this evidence could provide a proper ground for judicial review of the district judge's decision and we refuse the application for permission to introduce it.

### **Licensing Act 2003**

13. The short title of the Act is:

"An Act to make provision about the regulation of the sale and supply of alcohol, the provision of entertainment and the provision of late night refreshment, about offences relating to alcohol and for connected purposes."

14. The Act brought about major changes to the licensing system in England and Wales. The background, nature and purpose of its provisions are summarised in the Explanatory Notes to the Act.
15. Essentially, the Act integrated alcohol, public entertainment, theatre, cinema, night café and late night refreshment licensing. Previously there was a patchwork system under which liquor licences were granted by licensing magistrates but other licensing functions, such as public entertainment licensing, were the responsibility of local authorities. The Act followed the publication in April 2000 of a White Paper (Cm 4696) entitled "Time for Reform: Proposals for the Modernisation of Our Licensing Laws".

16. The Act created a unified system of regulation of the activities of the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment, referred to in the Act as the "licensable activities". The White Paper proposed that the licensing authority under the new scheme should be the local authority; and the Act follows that proposal. The government explained its reasons in the White Paper as follows:

"117. The current responsibility of magistrates for liquor licensing reflects their traditional role in maintaining the peace and the association of alcohol with crime. Entertainment licensing came on the scene at a time when the magistrates' role had moved a long way from law enforcement towards the administration of justice. With an integrated system of licensing it is necessary to decide if the responsibilities should fall to the magistrates or the local authorities or some third body which might involve both.

...

123. There are three compelling reasons in favour of giving the local authority (at district level) the responsibilities we have described in this White Paper. They are:

- Accountability: we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken
- Accessibility: many local residents may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors
- Crime and disorder: Local authorities now have a leading statutory role in preventing local crime and disorder, and the link between alcohol and crime persuasively argues for them to have a similar lead on licensing.

124. In reaching our conclusion, we do not in any way seek to devalue the importance of the wider contribution the local licensing justices have made for so many years. While in our proposals they would be relieved of administrative licensing responsibilities, they would retain, in their capacity as magistrates, the responsibility for dealing with people charged with offences under licensing law and for the imposition of sanctions and penalties in respect of personal licence holders."

17. Magistrates also have an appellate function, which lies at the heart of this appeal.

18. Section 4 sets out general duties of licensing authorities. It identifies "licensing objectives" which licensing authorities are to promote. These include the prevention of public nuisance. Section 5 requires licensing authorities to produce statements of licensing policy for three year periods. In carrying out its licensing functions, a licensing authority must have regard to its licensing statement and to any guidance issued by the Secretary of State for Culture, Media and Sport under s182. Before determining its policy for a three year period, a licensing authority must go through a process of public consultation: s5(3). Section 6 provides for licensing authorities to conduct their licensing functions through licensing committees. Section 9 deals with proceedings before licensing committees and empowers the Secretary of State to make regulations about them.
19. There are various types of "personal licence" and "premises licence" which a licensing authority may grant. The present case concerns a premises licence granted under s18. It is open to a licensing authority to attach such conditions to a licence under s18 as it considers necessary for the promotion of the licensing objectives identified in s4.
20. Under s51 an "interested party" or a "responsible authority" may apply to the licensing authority for a review of a premises licence. An interested party includes anyone living or involved in a business in the vicinity: s13(3). A responsible authority includes the local authority which has statutory responsibilities in relation to the protection of the environment and human health: s13(4)(e). In the present case the applicant for the review was the council, acting through the EHCS. Section 53 expressly permits a local authority to make an application under s51 for a review of a premises licence in its capacity as a responsible authority and to determine the application in its capacity as the licensing authority.
21. Section 52 provides that a licensing authority which receives an application under s51 may, after holding a hearing to consider it and any relevant representations,
- "take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives."
- The steps mentioned in subsection (4) include modifying the conditions of the licence.
22. Section 52(10) requires the licensing authority to notify its determination, and its reasons for making it, to the holder of the licence, the applicant, any person who made relevant representations and the local chief officer of police.

23. Section 181 and schedule 5 provide a system for appeals from decisions of a licensing authority to a magistrates' court. Paragraph 8 of schedule 5 deals with appeals against decisions made under s52. It provides:

"(1) This paragraph applies where an application for review of a premises licence is decided under section 52.

(2) An appeal may be made against that decision by-

(a) the applicant for the review,

(b) the holder of the premises licence or

(c) any other person who made relevant representations in relation to the application."

24. The powers of a magistrates' court on an appeal from a decision of the licensing authority are to dismiss the appeal, to substitute any other decision which could have been made by the licensing authority, or to remit the case to the licensing authority to dispose of it in accordance with the direction of the court: s181(2).

25. The Magistrates' Courts Rules 1981 (made under the Magistrates' Court Act 1980) provide that where a statutory appeal lies to a magistrates' court against a decision or order of a local authority or other authority, the appeal shall be by way of complaint for an order (rule 34). The rules also provide that on the hearing of a complaint, it is for the complainant to go first in calling evidence (rule 14).

### **The appellant's submissions**

26. Mr Glen submitted that the district judge wrongly placed the burden on the appellant to disprove that the noise caused by customers of the Endurance was such as to amount to a public nuisance and that the conditions imposed by the licensing authority were necessary and proportionate. He submitted that it was for the EHCS to prove its allegation of public nuisance and to establish that the modifications to the licence were necessary and proportionate. The hearing before the district judge was a hearing de novo, at which evidence was given and tested by cross-examination. Mr Glen pointed out that the licensing sub-committee itself stated that its decision was not based on any policy ground. Rather, it turned on the sub-committee's assessment of the facts. On factual issues of that kind, it undermined the nature of an appeal process by way of rehearing if the court started with a presumption in favour of the licensing authority. Moreover, such an approach did not comply with the requirement of article 6 of the European Convention that in the determination of his civil rights everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In support of this



submission he relied on the following passage from Paterson's Licensing Acts, 2009, para 5.4:

"Assuming we are correct in saying that the hearing in the magistrates' court needs to be article 6 compliant, then the magistrates would not be an "independent and impartial" tribunal if the court starts off from a position favouring the decision of the licensing authority. The licensing authority will be a party to any appeal and the success or failure of the appeal should depend on the evidence which is given and the arguments which are put forward."

27. Mr Glen also cited the decision of the Divisional Court in *R(Chief Constable of Lancashire) v Preston Crown Court* [2001] EWHC Admin 928. That case concerned an appeal from licensing justices to the crown court under the Licensing Act 1964. It was argued that there was a breach of article 6 because the composition of the court included two members who belonged to the same licensing committee as the magistrates whose decision was under appeal. The argument was rejected, but Mr Glen relied on a passage (at para 18) where Laws LJ, who delivered the main judgment, referred to the crown court conducting "a rehearing in the full and proper sense". If it was to be a rehearing in that sense, Mr Glen submitted that it must follow that the burden of proof on the appeal was the same as on the original hearing.
28. Mr Glen cited a number of other authorities for the proposition that an appeal against a licensing decision has long been recognised to be a rehearing. It is not necessary to refer to them, because it is not in dispute that the appeal is a rehearing at which the affected parties are all entitled to call evidence, and that the court must make its decision on the full material before it. The issue is what is the proper approach to the original decision and, in particular, the reasons given for it. Mr Glen did not submit that they should be disregarded. He accepted that the court hearing the appeal could properly take into consideration the reasons given by the licensing authority, but not to the point of placing a legal burden on the appellant.
29. Mr Glen submitted that the district judge went wrong in attaching too much significance to a sentence from a judgment of Lord Goddard CJ in *Stepney Borough Council v Joffe* (1949) 1 KB 599 cited by Edmund Davies LJ in *Sagnata Investments Limited v Norwich Corporation*. In *Sagnata Investments Limited v Norwich Corporation* an application was made under the Betting Gaming and Lotteries Act 1967 for a permit to open an amusement arcade in Norwich. The application was refused by the local authority and the applicant appealed to quarter sessions. The recorder who heard the appeal had written reasons for the refusal furnished by the town clerk and evidence of witnesses on both sides as to the merits of the

application. He did not have any information about what had happened before the licensing committee. He allowed the appeal. The local authority appealed to the Divisional Court (whose judgment is not reported) and then to the Court of Appeal (Lord Denning MR, Edmund Davies and Phillimore LJ). Its appeal was dismissed by the majority, Lord Denning dissenting. Lord Denning considered that the local authority was entitled to its opinion that it was socially undesirable to have such arcades in Norwich and that the recorder was wrong to substitute his view for those of the elected body responsible for making such decisions.

30. The majority considered that the recorder had been entitled to conclude that the local authority had effectively decided that it would not grant any permit under the Act for an amusement place in Norwich and that there was no error of law in his decision to allow the appeal. Edmund Davies LJ, at page 633, quoted Lord Denning in the course of argument as summarising the issue in this way:

"Is the hearing to be treated as a new trial to be determined on evidence de novo, without being influenced by what the local authority has done; or is the hearing to be treated as an appeal proper, in which the local authority's decision is to be regarded as of considerable weight, and is not to be reversed unless their decision is shown to be wrong?"

31. Edmund Davies LJ considered that this was a false antithesis. From the reasons which he gave for preferring an intermediate position, he must have understood the second of Lord Denning's alternatives ("an appeal proper") as confined to deciding whether the local authority's decision was wrong in law on the material before it. He went on to say, at page 636:

"The provision for an appeal to quarter sessions seems to me largely, if not entirely, "illusory" if the contention of the appellant council is right. If it is, I am at a loss to follow how the recorder set about discharging his appellate functions. Lacking all information as to what had happened before the local authority, save the bare knowledge that they had refused the application and their written grounds for refusal, he would be powerless, as I think, to make any effective examination of the validity of those reasons."

32. Edmund Davies LJ expressed his conclusion as follows:

"...I hold that the proceedings before this recorder were by way of a complete rehearing.

But, contrary to what has been contended, this conclusion does *not* involve that the views earlier formed by the local authority

have to be entirely disregarded by quarter sessions. It is true that in *Godfrey v Bournemouth Corporation* [1969] 1 WLR 47, after observing that an appeal to quarter sessions under schedule 6 to this same Act was by way of a complete rehearing, Lord Parker CJ said, at p 52, "the discretion is a discretion which the recorder in the present case had to arrive at himself uninfluenced by what the local authority had done". But with respect, I do not accept this. It went much too far, it was in direct conflict with the view which Lord Parker had earlier expressed in *R v Essex Quarter Sessions, ex parte Thomas* [1966] 1 WLR 359-363, it was contrary to the approach adopted both by the recorder and by Lord Parker CJ himself in the instant case, and it was, with deference, an uncalled-for observation. Here again, *Stepney Borough Council v Joffe* [1949] 1 KB 599 establishes what I regard as the proper approach, for, having made the point that there was in that case an unrestricted appeal, Lord Goddard CJ continued at pp 602, 603:

"That does not mean to say that the court of appeal, in this case the metropolitan magistrate, ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter, and ought not lightly, of course, to reverse their opinion. It is constantly said (although I am not sure that it always sufficiently remembered) that the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgment was right."

Phillimore LJ's judgment was to similar effect.

33. Mr Glen observed that that case was one in which the local authority's decision had been based on a general policy, and that it was therefore right for the recorder to attach weight to the local authority's policy, although he still had to form his own judgment on the evidence whether a permit should be granted. The decision, he submitted, provided no support for taking a similar approach where (as the licensing sub-committee recognised in the present case) no question of licensing policy was involved. The core question in this case was whether the noise caused by the customers of the Endurance amounted to a public nuisance, and this was a matter for the EHCS to establish on the evidence called before the district judge.

### **The council's submissions**

34. Mr Matthias QC submitted that Burton J was right in his approach to *Stepney Borough Council v Joffe* and *Sagnata Investments Limited v Norwich Corporation* and his dismissal of the appellant's claim. Burton J said in his judgment:

"43. I conclude that the words of Lord Goddard approved by Edmund Davies LJ are very carefully chosen. What the appellate court will have to do is to be satisfied that the judgment below "is wrong", that is to reach its conclusion on the basis of the evidence put before it and then to conclude that the judgment below is wrong, even if it was not wrong at the time. That is what this district judge was prepared to do by allowing fresh evidence in, on both sides.

44. The onus still remains on the claimant, hence the correct decision that the claimant should start, one that cannot be challenged as I have indicated.

45. At the end of the day, the decision before the district judge is whether the decision of the licensing committee is wrong. Mr Glen has submitted that the word "wrong" is difficult to understand, or, at any rate, insufficiently clarified. What does it mean? It is plainly not "*Wednesbury* unreasonable" because this is not a question of judicial review. It means that the task of the district judge – having heard the evidence which is now before him, and specifically addressing the decision of the court below – is to give a decision whether, because he disagrees with the decision below in the light of the evidence before him, it is therefore wrong."

35. Mr Matthias submitted that as a matter of principle, as well as precedent, there are good reasons why the magistrates' court should pay great attention to the decision of the licensing authority and should only allow an appeal if satisfied, on the evidence before it, that the decision was wrong. He pointed out that Parliament had chosen to make the local authority central to the promotion in its area of the licensing objectives set out in the Act, because local councillors are accountable to the local electorate and are expected to be sensitive to the needs and concerns of the local populace. In licensing matters there is often no single "right answer". Mr Matthias pointed to the conditions which the licensing authority attached to the licence on the review in the present case as an example. The ban imposed on customers taking drink from the premises in an open container after 6pm might equally have been imposed somewhat earlier or somewhat later. It is normal for an appellant to have to show that the order challenged was wrong. The only unusual feature about this type of appeal is that all parties have carte blanche to call evidence. It does not, however, follow that the respondent to the appeal should bear the responsibility of showing that the order should be upheld and so should be required to present its case first.

36. On the article 6 issue, Mr Matthias's propositions may be paraphrased as follows:

1. The decision of the licensing authority was an administrative decision, which admittedly involved a determination of the appellant's "civil rights" within the meaning of article 6, as it has been interpreted in the European case law.
2. The extent to which article 6 requires such a decision to be subject to review by an independent and impartial tribunal depends greatly on the nature of the decision. Article 6 is an important expression of the rule of law, but the rule of law itself allows proper scope for democratic process in administrative decision making.
3. Administrative decisions often involve making judgments and assessing priorities on matters of social and economic policy. It accords with democratic principles for such decisions to be taken primarily by democratically accountable bodies. The power of the High Court in judicial review proceedings to review the legality of such decisions and the procedures followed is sufficient to ensure compatibility with article 6.
4. Some administrative decisions, although not necessarily involving wide issues of policy, call for particular knowledge or experience on the part of the decision maker. Often such decisions will involve an evaluative judgment and the exercise of discretion. In such cases, too, the availability of judicial review in the High Court is sufficient to meet the requirements of article 6. It would be perverse if article 6 were to require a full fact-finding appeal to a tribunal which lacked the degree of knowledge and expertise of the original decision maker.
5. There may be cases where an administrative decision does not depend on what may be described as democratic questions (questions of local or national policy, such as belong to the political forum), but which depends essentially on a question of fact requiring no special knowledge or experience on the part of the decision maker. In such a case article 6 may require that an aggrieved person whose civil rights are determined by the decision should be entitled to have it reviewed by a tribunal whose power includes whatever factual review is necessary for justice to be done.
6. There is nothing in domestic or Strasbourg case law to suggest that there is a general principle that it is incompatible with article 6 for a person aggrieved by an administrative decision to bear the responsibility of establishing his complaint.

37. Mr Matthias's concession that article 6 is engaged in the present case followed from the decision in *Kingsley v The United Kingdom* (2002) 35 EHRR 10, paragraph 34, where it was held that article 6 is engaged in proceedings which determine whether or not an individual is entitled to undertake licensable activities. For his other submissions he cited a number

of authorities including particularly *R (Alconbury Developments Limited) v Secretary of State for the Environment, Trade and the Regions* [2001] UKHL 23, [2003] 2 AC 295, *Runa Begum v Tower Hamlets London Borough Council* [2003] UKHL 5, [2003] 2 AC 430, *Tsfayo v United Kingdom* 48 EHRR 47, [2007] LGRI, and *Ali v Birmingham City Council* [2010] UKSC 8, [2010] 2 AC 39.

38. Mr Matthias submitted that in this case the appellant's right of appeal to the district judge amply satisfied the requirements of article 6.

### **Conclusion**

39. Since Mr Glen accepted (in our view rightly) that the decision of the licensing authority was a relevant matter for the district judge to take into consideration, whether or not the decision is classified as "policy based", the issues are quite narrow. They are:

1. How much weight was the district judge entitled to give to the decision of the licensing authority?
2. More particularly, was he right to hold that he should only allow the appeal if satisfied that the decision of the licensing authority was wrong?
3. Was the district judge's ruling compliant with article 6?

40. We do not consider that it is possible to give a formulaic answer to the first question because it may depend on a variety of factors - the nature of the issue, the nature and quality of the reasons given by the licensing authority and the nature and quality of the evidence on the appeal.

41. As Mr Matthias rightly submitted, the licensing function of a licensing authority is an administrative function. By contrast, the function of the district judge is a judicial function. The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires. (See the judgment of Lord Hoffmann in *Alconbury* at para 74.)

42. Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance.

Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

43. The statutory duty of the licensing authority to give reasons for its decision serves a number of purposes. It informs the public, who can make their views known to their elected representatives if they do not like the licensing sub-committee's approach. It enables a party aggrieved by the decision to know why it has lost and to consider the prospects of a successful appeal. If an appeal is brought, it enables the magistrates' court to know the reasons which led to the decision. The fuller and clearer the reasons, the more force they are likely to carry.
44. The evidence called on the appeal may, or may not, throw a very different light on matters. Someone whose representations were accepted by the licensing authority may be totally discredited as a result of cross-examination. By contrast, in the present case the district judge heard a mass of evidence over four days, as a result of which he reached essentially the same factual conclusions as the licensing authority had reached after five hours.
45. Given all the variables, the proper conclusion to the first question can only be stated in very general terms. It is right in all cases that the magistrates' court should pay careful attention to the reasons given by the licensing authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which the magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal.
46. As to the second question, we agree with the way in which Burton J dealt with the matter in paragraphs 43-45 of his judgment.
47. We do not accept Mr Glen's submission that the statement of Lord Goddard in *Stepney Borough Council v Joffe*, applied by Edmund Davies LJ in *Sagnata Investments Limited v Norwich Corporation* is applicable only in a case where the original decision was based on "policy considerations". We doubt whether such a distinction would be practicable, because it involves the unreal assumption that all decisions can be put in one of two boxes, one marked policy and the other not. Furthermore, *Stepney Borough Council v*

*Joffe* was not itself a case where the original decision was based on "policy considerations". In that case three street traders had their licences revoked by the London County Council after they were convicted of selling goods at prices exceeding the maximum fixed by statutory regulations. On appeal the magistrate decided that they were still fit to hold the licences. The county council unsuccessfully argued before the Divisional Court that the magistrate's jurisdiction was limited to considering whether or not there was any material on which the council could reasonably have arrived at its decisions to revoke the licences. The court held that the magistrate's power was not limited to reviewing the decision on the ground of an error of law, but that he was entitled to review also the merits. It was in that context that Lord Goddard went on to say that the magistrate should, however, pay great attention to the decision of the elected local authority and should only reverse it if he was satisfied that it was wrong.

48. It is normal for an appellant to have the responsibility of persuading the court that it should reverse the order under appeal, and the Magistrates Courts Rules envisage that this is so in the case of statutory appeals to magistrates' courts from decisions of local authorities. We see no indication that Parliament intended to create an exception in the case of appeals under the Licensing Act.
49. We are also impressed by Mr Matthias's point that in a case such as this, where the licensing sub-committee has exercised what amounts to a statutory discretion to attach conditions to the licence, it makes good sense that the licensee should have to persuade the magistrates' court that the sub-committee should not have exercised its discretion in the way that it did rather than that the magistrates' court should be required to exercise the discretion afresh on the hearing of the appeal.
50. As to article 6, we accept the propositions advanced by Mr Matthias and we agree that the form of appeal provided by s182 and schedule 5 of the Act amply satisfies the requirements of article 6.
51. Although the point is academic in the present case, we doubt the correctness of part of the district judge's ruling where he said:

"I am not concerned with the way in which the licensing sub-committee approached their decision or the process by which it was made. The correct appeal against such issues lies by way of judicial review."
52. Judicial review may be a proper way of mounting a challenge to a decision of the licensing authority on a point of law, but it does not follow that it is the only way. There is no such express limitation in the Act, and the power



given to the magistrates' court under s181(2) to "remit the case to the licensing authority to dispose of it in accordance with the direction of the court" is a natural remedy in the case of an error of law by the authority. We note also that the guidance issued by the government under s182 and laid before Parliament on 28 June 2007 states in para 12.6:

"The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both."

However, this point was not the subject of any argument before us.

53. For the reasons which we have given, the appeal is dismissed.