

LEGISLATIVE UPDATE

Committee	Licensing Committee
Officer Contact	Beejal Soni, Legal Services
Papers with report	None
Ward(s) affected	All

HEADLINE

This report provides an update for Members on:

- Recent caselaw
- Relevant upcoming Legislation
- Guidance recently issued

RECOMMENDATION

That the Committee note the update.

CASELAW UPDATE (two cases)

Sharanjeet Lalli v Commissioner of Police for the Metropolis and LB Newham [2015] EWHC 14 (Admin)

The licensed premises, a public house ("PH") in Newham, the was licensed to Mrs Lalli was licence to Mrs Lalli and managed by her husband. On 27 July 2014 a serious incident occurred lowest the victim in a coma after two weeks. Mr Lalli was charged with assault and pleaded not guilty. The police were notified by staff of the incident the following day. Further investigation led to Summary Review proceedings under S53A as the police believed the premises were associated with Serious Crime or Serious Disorder.

At the summary review hearing, police led evidence that Mr Lalli had seriously assaulted the victim. CCTV footage shows the victim being punched and kicked in the head outside the club. Footage also showed someone placing the victim into the recovery position, and Mr Lalli "inappropriately" lifting him by his hands. Staff at the Pub failed to call for assistance from the Ambulance Service or the police. The Licensing Sub-Committee determined to suspend the licence until such time as the summary review was completed. A judicial review application was lodged by the Licence Holder on the basis that a single incident could not lead to a conclusion that the premises was associated with serious crime or serious disorder.

Finding in favour of the Metropolitan Police Service, the court emphasised:

- It was not for the local authority to question the validity of the certificate issued by the Commissioner of police; challenges to a certificate's lawfulness may only be made by means of a judicial review.
- To require licensed premises to be associated with more than one crime would frustrate the purpose of the summary review. There must be a link between the premises and such crime or disorder relevant to the management of the premises but it was up to the Senior police officer to decide whether such a link existed prior to issuing a certificate under the Summary Review process
- The purpose of a summary review is to enable swift action to be taken within the parameters of the legislation with a view to promoting licensing objectives.
- A judicial review against any interim steps can be lodged on the basis of unreasonableness or bias.
- Each application is case specific and it is reasonable that a licensing subcommittee may conclude that a single incident associates a premises or serious crime or serious disorder

Gold Kebab Ltd v Secretary of State for Communities and Local Government [2015] All ER (D) 48 (SEP)

The Claimant occupied the ground level of a three-storey building. Residential accommodation was located above the licensed premises. In 1998 a planning consent was granted for the premises to operate as a takeaway and restaurant, with conditions placed on the premises with regard to opening hours. Subsequently numerous planning applications were made to extend the opening hours of the premises. In 2008, separate licensing conditions extended opening hours of the premises beyond the opening hours specified on the planning permission

In 2013, a further planning application to extend the opening hours was refused on the grounds that the extended hours were inappropriate and disturbances were likely when people are trying to sleep in adjacent residential premises. Despite this refusal, the premises ignored the planning conditions and operated in accordance with the hours granted by the Licensing Act 2003. This resulted in enforcement action for breach of planning conditions. On appeal, the Planning Inspector refused an application to vary the planning conditions and enforcement notice. The Inspector's decision referenced the site's proximity to residential accommodation and the likely inconvenience that it would cause. This led to an application to the High Court under S288 of the Town & Country Planning Act 1990 to quash the Inspector's decision.

During this application, the company accepted the distinction between licensing and planning regimes but argued that the licensing regime had taken into account the prevention of nuisance when granting extended operating hours. The Court found in favour of the Planning Inspector's decision, highlighting that planning and licensing took into account a differing considerations when addressing matters of nuisance. Consequently the Inspector was entitled to conclude that he was not bound by a separate licensing regime when determining opening hours for the premises.

The key outcome is that even where statutory schemes overlap, such as in planning and licensing, compliance with and scheme may quite the lead to different incompatible outcomes under the other scheme.

UPCOMING LEGISLATION

Immigration Bill

The Immigration Bill 2015 received its first reading in Parliament on 17th September with its second reading due on 13th October 2015. Parts 2 and 3 of Schedule 1 of the legislation contain the implications in respect of amendments to the Licensing Act 2003.

The proposed legislation covers a lot of ground as it seeks to tackle immigration issues in this country including the provision of additional enforcement tools. There are specific amendments to the existing licensing legislation such that applicants for the granting of premises licences, transfers and interim authority notices must be "entitled to work in the UK".

The proposals would also see a premises licence lapse as it currently does on the death or insolvency of a Premises Licence Holder should such an individual no longer be entitled to work in the United Kingdom. There are also implications in respect of personal licences where the reference to "relevant and foreign offences" will be expanded to include "immigration offences and immigration penalties".

Similarly, a personal licence may lapse if an individual ceases to be entitled to work in the UK. The Bill if passed will also see a right of entry to licensed premises to investigate immigration offences together with amendments to the existing offences relating to the employment of illegal immigrants.

There is also the potential of illegal working closure notices which operate in a similar way to existing powers of closure but here relating specifically to immigration offences.

Officers will provide further updates as the Bill progresses.

GUIDANCE RECENTLY ISSUED

Gambling Act

On 30 September 2015, the Gambling Commission published its first edition of guidance to licensing authorities. According to information on the Gambling Commission's website, the Guidance emphasises the importance of partnership working between licensing authorities and operators. The Gambling Commission states that the Guidance will provide assistance to authorities on the requirement for operators to conduct a local risk assessment. The purpose of operator-led risk assessments is to ensure that operators understand the risks associated with the areas in which they have, or wish to have a gambling premises.

The requirement for operators to provide local risk assessment comes into force in April 2016. The Guidance provides operators an opportunity to review their existing risk assessments and address the issues outlined within the guidance. The guidance can be found on the following link online: <http://www.gamblingcommission.gov.uk/Licensing-authorities/Information-for-licensing-authorities/Guidance-to-licensing-authorities-5th-edition.aspx>

Hard copies can be made available to any Member on request.

Licensing of Late Night Refreshment

On 01 October 2015, the Home Office issued guidance on the licensing of late night refreshment to reflect forthcoming changes to the Licensing Act 2003 made by the Deregulation Act 2015. The changes will allow Licensing Authorities to designate a particular description of premises as not requiring permission to sell hot food and drink after 23:00, that Licensing Authorities can designate areas where premises do not need a Premises Licence to sell hot food or drink after 23:00 and, finally, Licensing Authorities can stipulate that during periods between 23:00 and 05:00, premises may trade freely for the provision of hot food and drink without the need for a licence.

The Guidance lists the categories of premises which a Licensing Authority can decide are exempt from requiring a licence for hot food or drink after 23:00. The Guidance also makes it clear that whilst a Licensing Authority can use more than one type of exemption, it cannot use different forms of exemption in conjunction with one another, giving the example that a Licensing Authority is not permitted to change the times premises require permission to sell hot food and drink in one geographic area only. In other words, it would have to change the hours across the entire area for the Licensing Authority.

If a premises becomes exempt from the requirement to hold a Premises Licence for the sale of hot food, but does not surrender it, there is no requirement for the Licence Holder to continue to pay an annual fee, if the Premises Licence only permits late night refreshment. Any conditions on a licence relating solely to the provision of the late night refreshment, likewise, no longer have effect.

Members are advised that the guidance is not statutory. However, it is anticipated that it will be incorporated into the Section 182 guidance when it is next updated. Members are further advised that the changes covered within this guidance are expected to come into effect in November 2015 when regulations prescribing premises types come into force.

The guidance can be found on the following link:

<https://www.gov.uk/government/publications/guidance-on-the-licensing-of-late-night-refreshment> . Hard copies can be made available to any Member on request.

Implications on related Council policies

None at this stage - Officers will follow the progress of the Bill through Parliament and keep Members informed of any implications.

Legal implications

Legal comments are contained within this report.

Financial Implications

None at this stage

Background Papers / Further Reading Material

NIL