

LEGISLATIVE & INDUSTRY UPDATE

Committee name	Licensing Committee
Officer reporting	Glen Egan, Legal Services
Papers with report	None
Ward	All

HEADLINES

This report advises Licensing Committee of a recent licensing appeal considered by the High Court.

RECOMMENDATION

That the Committee note the report.

SUPPORTING INFORMATION

London Borough of Lambeth v Ashu

Ms Ashu operated a 24-hour convenience store within Lambeth. The Premises Licence authorised the sale of alcohol for consumption off the premises on Monday to Saturday from 08:00 - 23:00 and on Sunday from 10:00 - 22:30.

In January 2016 the Metropolitan Police applied for a review of the Premises Licence because there had been a number of sales of alcohol outside of these permitted hours.

The Licensing Sub Committee of the London Borough of Lambeth held a Review Hearing, and on 12 April 2016, revoked the Premises Licence. In its reasons the Sub-Committee stated that they had no confidence in Ms Ashu's willingness to abide by the licence conditions. In particular, they were greatly concerned that sale of alcohol had taken place at 1.30AM on 10 April 2016 - being 2 days before the Sub Committee's meeting and considered that the Licence Holder could not provide any assurance that she would abide by her Licence Conditions in the future.

Ms Ashu appealed this decision and in February 2017 Camberwell Green Magistrates Court upheld her appeal and imposed an additional condition on her licence (that have been proposed by Ms Ashu) to require the premises to close at 23:00 on Monday - Saturday and at 22:30 on a Sunday. In addition, the Magistrates Court ordered the London Borough of Lambeth to pay Ms Ashu's legal costs.

The London Borough of Lambeth subsequently appealed the decision of Camberwell Green Magistrates Court to the High Court.

The High Court, in late 2017, upheld Lambeth's appeal and held as follows:

An appeal to the Magistrates Court operates as a rehearing, but the magistrates must be satisfied that the Council's decision was wrong before it can uphold an appeal. The burden of proof is on the appellant to show that the Council's decision was wrong.

The Magistrates Court is under a duty to give full and proper reasons for its decision so that all parties can understand the basis of the decision.

If there has been a change of circumstances between the original decision of the Council and the date of the hearing in the Magistrates Court that change does not necessarily entitle the Court to substitute its decision for that of the Council.

On reviewing the decision of Camberwell Green Magistrates Court, it was clear that the reasons given were inadequate. The Magistrates Court had merely stated that they had read the minutes of the Sub Committee and that they understood its concerns, but did not give any further reasons for its decision to uphold the appeal. In particular, the magistrates did not state whether they considered that Lambeth's original decision had been wrong.

Further, the Magistrates should not have substituted their view for that of Lambeth when the appellant proposed to change her opening hours. The Magistrates should have remitted the case back to the Licensing Sub Committee in view of this change of circumstances.

The High Court concluded: "the absence of any adequate explanation of the Magistrates Court's reasons is in stark contrast to the record of the Sub Committee deliberations which makes plain that they had considered lesser alternatives to revocation and the reasons why they had rejected them. This is not a mere technicality. The court's reasons do not show any competent consideration of the matters that gave rise to the Sub Committee's concerns. Those were material concerns in November 2016 just as they had been in April 2017 and the failure to address them vitiates the purported exercise of their discretion".

The High Court therefore quashed the decision of Camberwell Green Magistrates Court and also overturned the order Lambeth were to pay the costs of appeal. The court remitted the appeal to be heard by a different bench at Camberwell Green Magistrates Court, with a direction that in reaching its fresh decision the court must give adequate reasons for its decision. Ms Ashu was also ordered to pay the legal costs incurred by Lambeth in both the Magistrates and High courts.

Conclusion

It is rare for a licensing appeal to reach the High Court. This decision provides further confirmation that the Magistrates Court hearing a licensing appeal is not to substitute its view of for that of the local authority unless it is clearly satisfied that the original decision was wrong and that the court must have sufficient reasons to justify its decision.

BACKGROUND PAPERS

High Court Judgement