

IN THE EAST LONDON MAGISTRATES' COURT

APPEAL UNDER SECTION 181 and SCHEDULE 5 LICENSING ACT 2003

BETWEEN:

SHARANJEET LALLI

Appellant

and

LONDON BOROUGH OF NEWHAM

Respondent

This is an appeal against a decision made by the licensing sub-committee of the Local Authority (LA) on 22 August 2014 at a full review hearing concerning the premises known as William the Conqueror at 630 Romford Road, London E12 5AQ. Mrs Lalli held the premises licence and was the designated premises supervisor. She has held those positions since the licence was first granted in 2010.

Both parties have prepared very helpful skeleton arguments. There is no need for the whole history of hearings to be set out in this decision as there is considerable detail in those documents. The review was triggered following an incident on the late evening of 27 July 2014. There have been a number of other hearings before the licensing sub-committee but the only decision that this appeal is concerned with is that made at the full review. A decision was made to revoke the licence. The premises have remained closed since 29 July. The decision of the sub-committee is to be found at page 62 of the papers filed. The finding was that 'the incident clearly demonstrated a catastrophic failure in the management of the premises and is clearly not promoting the licensing objectives, and as such, this decision is appropriate'.

The parties are agreed about the relevant law and policy to be applied. This has been a re-hearing of the merits of the case. The court has heard evidence in person from the appellant Mrs Lalli and Mr Darrell Butterworth and for the respondent from Mr John Chislett and DC Cawdery. There are a number of documents relied upon by the parties. Importantly the court had an opportunity to view all the available CCTV with

the assistance of both parties. The CCTV available in court was more extensive than that which was shown to the licensing sub-committee.

In paragraphs 23 to 25 of his skeleton argument Mr Dabbs sets out the approach to licensing appeals in the magistrates' courts approved by the higher courts. On appeal the court has to consider all of the evidence before it and determine whether, after considering that evidence, the decision of the sub-committee was wrong. The task of the court on appeal is summarised by **Lindblom J** in paragraph 36 of the judgment in **Townlink**:

'What the District Judge had to do was to consider the evidence before him with the relevant principles in mind. Those principles included the necessity that the licensing objectives be promoted, and proportionality. Bearing in mind the decision of the Council's licensing sub-committee and the significance of that decision as the result of the democratically elected members having applied their minds to the issue, the District Judge nevertheless had to adopt the approach approved by the court in Joffe, Sagnata, and Hope and Glory. He had to do this by considering "whether, because he [disagreed] with the decision below in the light of the evidence before him, it [was] therefore wrong".'

It is for the appellant to persuade the court that it should reverse the decision. The appellant relies upon the guidance given to a licensing authority on determination of a review at paragraph 26. The submissions on her behalf are that revocation of the licence by the sub-committee was not necessary to address the concerns raised and that it was not an appropriate and proportionate response.

The respondent LA argues that the decision of the licensing sub-committee was not wrong. The incident that triggered the review has been the subject of proceedings before the High Court. That court concluded that 'there is no requirement that the licensed premises must be persistently associated, or that they have been repeatedly associated more than once, with serious crime or serious disorder. They may be associated with serious crime or serious disorder on the basis of a single incident of serious disorder or a single serious crime.' The High Court concluded that in respect of the events of 27 July 2014 that the police superintendant who made the application

for a summary review of the licence 'was plainly entitled in the circumstances as they appeared to be to him to give the certificate that he did, stating that the licensed premises were associated with serious crime.' The respondent LA relies not just upon the incident of that day but also the wider involvement of the appellant's husband in the management of the premises.

Until this incident on 27 July 2014 there had been no complaint about the way in which the premises were being run, nor had there been any report of crime at the premises since Mrs Lalli became the holder of the premises licence and DPS. It is accepted that the licensing sub-committee had even granted permission for extended hours in 2012 which was unusual within a 'cumulative impact zone' and would not have been granted if the premises had given any cause for concern to the police or the licensing authorities.

Issue is now taken as to Mrs Lalli's role. PC Padda says in his statement that she was never in the public house when he visited. At page 4 of his statement he says, "I have no issue with Mrs Lalli, but was concerned that every time police visited the venue she was never around and that Mr Lalli would be the person in control of the premises and would deal with our enquiries". The anecdotal evidence of DC Cawdery was that she had visited on several occasions between 2011 and 2013 and Mrs Lalli was not there but that she came down and was co-operative when called by her son. What is clear is that the police had never raised the issue of Mr Lalli's involvement in the running of the pub with Mrs Lalli or with the licensing authorities. Mrs Lalli's own evidence is that this is a family business. She, her husband and her son hold personal licences. She does not work on Sundays and usually works in the daytime while her husband and son work in the evenings. She cannot be criticised for not being in the bar during the late evening on 27 July. There is no requirement for the premises licence holder or the DPS to be on the premises at all times. The fact that she was upstairs in the residential part of the premises was coincidental because the family live on the same premises. At the time of the incident there were two people who hold personal licences working in the bar. It should be noted that Mr Lalli's role at the premises does appear to have been far greater than that promised to the licensing committee on 23 April 2010 when Mrs Lalli was granted the licence. All the evidence

suggests that Mr Lalli very much remained 'the face of the pub' contrary to what was said at that time.

The principal evidence of the events of 27 July 2014 is the CCTV from the premises. What is shown on it are a series of events that result in two separate criminal charges against two people for two assaults upon the same person, a customer, at the premises. The first assault is that alleged against the appellant's husband Mr Lalli, the second against another customer. Mr Dadds is critical of the fact that the licensing sub-committee was only shown part of the CCTV that is now available and only viewed that once with commentary provided by PC Padda. Mr Chislett was asked to confirm that Mr Dadds had asked the committee to view it again on three occasions when addressing it so that he might comment upon parts of it and that was declined.

I will deal below with what happened inside the pub concerning Mr Lalli but the LA case relies also quite significantly on what went on outside. The customer was taken outside by customers. There was a moment – very short – when the door closed and then opened again. It was in that moment that he was punched once to the head and fell backwards to the ground, partially into the road. Mr Lalli emerges shortly afterwards. It is not obvious that he or Mr Sheikh would have seen that blow struck such that information about how his injury occurred could be given. DC Cawdery had been called to give evidence at the appeal. She had realised that it was essential to obtain the 999 tape relating to the call that was made that night. PC Padda had not previously requested that. The parties were able to listen to it and it did then assist in understanding some of what was seen on the CCTV. Mr Sheikh was the witness who made that call. He can be seen on CCTV with his mobile phone. On the tape he is apparently asked whether he requires both police and ambulance and he says that he does. Ryan Lalli, a personal licence holder on duty, is certainly aware of that call as he takes the phone to give directions. The police did not attend. There is no evidence why not. PC Padda has previously criticised the fact that the police were not called. They were requested although not by either Ryan or Surjit Lalli. PC Padda appeared to suggest that a second call to the emergency services ought to have been made. DC Cawdery gave evidence after a short break to listen to the 999 tape. She accepted that it could not be a criticism of the premises if the police were requested but were not notified. Criticism was also previously made of the fact that when rendering

assistance to the man he was firstly put into the recovery position and then placed inappropriately onto his back and that Mr Lalli participated in this. DC Cawdery was able to confirm that that was done in consequence of an instruction by the emergency response staff on the phone. That in fact accords with the submissions made by Mr Dadds to the licensing sub-committee on his instructions without having heard the 999 tape. She accepted that when Mr Lalli is seen earlier pulling the arms of the man that it may have been to get him out of the road although she noted that this was not achieved. PC Padda's statement and previous evidence described the victim being 'found in the street with a head injury'. DC Cawdery accepted that was a description open to misinterpretation in the circumstances that were now apparent.

Mr Lalli did not give evidence at the appeal, or before the sub-committee. He awaits trial at the Crown Court charged with ABH following the incident on 27 July. The court has been provided with a transcript of his police interview under caution following his arrest. During that interview Mr Lalli gives an account that includes accepting that he kicked the man twice. It is not part of this appeal to determine his criminal responsibility for what happened that evening. The witness Mr Sheikh describes two kicks which were then followed by a further kick to the head. He also did not give evidence at the appeal. What is apparent from the CCTV is that Mr Lalli kicked out three times, twice towards the buttocks and once in the direction of the upper body but it is not possible to see where or indeed whether that final kick made contact. It was left to other customers to remove the man from the premises as Mr Lalli walked around the other side of the pool table.

What the appellant must concede, and does so, is that Mr Lalli's conduct on that night fell far short of what would be expected of a responsible personal licence holder. The LA must be concerned about that. There is criticism that he delayed in dealing with a difficult customer who was harassing others in the pub. The CCTV is clear that he did start to deal with the customer appropriately. He is seen to be speaking to him by the bar, he takes his drink from him and a refund is given. He walks away pursued by the customer and as they move along by the bar there is the start of the physical contact. That is also summarised by the interviewing police officer at page 197. Thereafter Mr Lalli's behaviour is not appropriate.

Mrs Lalli gave evidence that there would normally be a door supervisor on Sunday evenings. On 27 July he had unusually been given the evening off as the previous two Sundays had been very quiet. She appeared to suggest that the provision of a door supervisor on Sundays was voluntary although the decision to grant the licence in 2010 records that as one of the licence conditions. It may be that events would not have happened as they did if that person had been on duty.

PC Padda identifies six separate concerns in his statement at page 179 of the papers.

The first of those concerns the customers being involved in removing the victim from the premises. In view of Mr Lalli's behaviour it was right that he was moved away from the victim. Mr Butterworth observes that it is not unusual for regular customers to assist in these circumstances. What would have been more appropriate would have been for a professional door supervisor to have been on duty to take control of the situation as he should have been.

The second criticism is that the customer should have been removed earlier. Mr Butterworth accepted in evidence that with the benefit of hindsight that might be right.

The third point is the assault alleged by Mr Lalli. That is undoubtedly a significant concern. There is clear evidence that he handled the situation badly. The issue of whether he is guilty of an assault is not for this appeal.

The fourth concern raised is addressed above. An ambulance was called straight away. Assistance was given and it seems at least one part of that assistance that was previously subject to criticism was on instructions from the call operator. The caller also asked for police to attend but they did not until later when the premises were closed. Mrs Lalli's evidence was that she was not aware of the detail of what had happened until the following morning. It would have been appropriate for her then to contact the police and licensing authority and it is regrettable that she did not but they attended the premises in any event. PC Padda's statement is not as helpful as it might have been as he includes no times of police attendance.

The fifth concern is the information given to the ambulance service. Mr Sheikh says that he was in fear for his safety if he gave details although he had an opportunity to say whatever he wanted to on the phone as he walked some distance from the scene on the CCTV while making the 999 call. He did not see what happened outside the door. He saw 'Billy was on the floor in the road. Standing near him was the unknown white male was standing over the top of him.' There is no evidence from the members of the ambulance service as to who was spoken to and what information was or was not given.

The sixth concern raised is the level of Mrs Lalli's control of the premises and whether there is a 'catastrophic failure' of the management to promote the licensing objectives – in this case the objective to prevent crime and disorder. That was ultimately the conclusion of the licensing sub-committee and the reason given for revoking the premises licence.

It is apparent that this is a family business. Concerns were raised several years ago about Mr Lalli's involvement following his conviction for breaching licence conditions. Mrs Lalli was granted the licence following representations made on her behalf that her husband would not be running the pub and that she would be 'the face of the pub'. The evidence I have heard suggests that that was not the position in July 2014 and that her husband remained 'the face of the pub', certainly in the evenings. This had not been the subject of any complaint by the police or licensing authority until the events of 27 July even though it was obviously the perception of the police officers who had visited. The conclusion I must reach is that this was because there had been no problems at the premises. There has been a suggestion, with no evidence to support it, that because no member of staff at the premises on this occasion made the 999 call that there may have been other incidents that have been 'swept under the carpet'. It would be entirely inappropriate for me to come to that conclusion. The evidence is that there has been no other reported crime connected with these premises. The evidence is rather that the extended hours would not have been granted if the licensing authorities had not been happy about the way in which the premises were being run.

Mr Lalli behaved unprofessionally and inappropriately on the evening of the 27 July. The incident within the premises was not the behaviour expected of someone in management control of licensed premises. Mr Lalli faces a criminal trial in respect of that incident. The appellant rightly accepts that if her appeal is to succeed that he must be excluded from any role within the premises. I have had the benefit of seeing more extensive clips of the CCTV than the members of the licensing sub-committee. In particular, in respect of incidents outside the premises, the information about the 999 tape has assisted me in reaching a less critical conclusion about the role of the management. Immediate assistance was called and Ryan Lalli assisted by speaking to the operator; the police were requested; the criticism of the first aid administered was not entirely justified. There can be no doubt that this was an incident of a serious crime – a serious assault by one customer of the premises upon another. That assault might well have been prevented if a door supervisor had been on duty. To that extent it is certainly a management failure on that day.

The decision to revoke the licence amounts to the ultimate sanction in these circumstances. Until 27 July there had been no concerns expressed about the way in which the premises were being managed. The guidance at paragraph 9.43 requires any determination of whether an action or step is appropriate for the promotion of the licensing objectives to involve an assessment of what action or step would be suitable to achieve that end. The licensing sub-committee came to the conclusion that only revocation of the licence would be appropriate to promote the licensing objectives.

I am asked to consider whether a lesser sanction is appropriate to promote that objective in the circumstances of the evidence that I have heard. That would require a determination that the licensing sub-committee was wrong to come to that conclusion.

Mr Whur criticises as vague the nature of the proposals for additional conditions put forward on behalf of the appellant. There have been a number of potential conditions advanced at various hearing before the committee hearings. Mr Dadds makes proposals at paragraph 37 of his skeleton argument. These are partly based upon the recommendations of Mr Butterworth in his statement at paragraphs 24 – 26. The suggestions relating to conflict resolution training, first aid training, and a protocol for calling the police if a similar situation occurs in the future are appropriate suggestions

to address what are said to be the management failures on 27 July. The licensing sub-committee was rightly concerned about whether Mrs Lalli was in control of the premises and whether they could have any confidence about the future. Mr Dadds suggests a condition excluding Mr Lalli from the licensed area of the premises 'until the conclusion of his trial for alleged assault'. The inference is that he might thereafter be able to resume his role at the premises depending upon the outcome. That would not be appropriate. The condition that would be appropriate to promote the licensing objective would be that he should be excluded from the licensed area of the premises other than as a customer in the future. That was effectively the undertaking that was given to the licensing committee in 2010 and was not adhered to. The police were well aware of that and have raised no concerns until now. Presumably if such a condition existed on the licence they would be alert to it, make appropriate checks, and report any breach. Mrs Lalli would presumably be concerned to ensure that it was abided by to ensure that there was no further problem with the licensing authorities.

Any decision must be proportionate to address the concerns raised. I have heard the evidence now available afresh. I am satisfied that the decision to revoke the premises licence was wrong and that the concerns can be addressed by the inclusion of further conditions on the licence as suggested in the appellant's skeleton argument to promote the licensing objectives with the inclusion of a condition to exclude Mr Surjit Lalli from any role in the running of the licensed premises in the future.

Alison Rose
DJ(MC)
7 May 2015