

**IN THE WESTMINSTER MAGISTRATES' COURT**

**BETWEEN:-**

**THE COMMISSIONER OF THE METROPOLITAN POLICE**

**Complainant**

**and**

**MAYFAIR REALTY LIMITED**

**Respondent**

**and**

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

**Interested Party**

1. This case deals with an application dated 18<sup>th</sup> June 2014 by the Metropolitan Police (“the Applicant”) for a closure order under section 21 of the Criminal Justice and Police Act 2001 which relates to the unauthorised sale of alcohol by retail by Mayfair Realty Limited (“the Respondent”). The issue is solely whether or not the sale of alcohol is unauthorised.
2. The substantive hearing was on 11<sup>th</sup> July 2014. In an earlier hearing I permitted Westminster City Council (“the IP”) to be joined as an Interested Party. This application was opposed by the Respondent. Although there was to be no evidence at the substantive hearing I accepted that the IP did have an interest bearing in mind its responsibility for the management of licences within its borough and I accepted that it might have representations even on the law that might differ from those of the Applicant.
3. The Respondent is the holder of a premises licence which permits the sale of alcohol by retail.
4. On 25<sup>th</sup> April 2014 the Applicant applied to the IP for a summary review of the premises licence under section 53A of the Licensing Act 2003 (“the Act”).
5. On 29<sup>th</sup> April, at a contested inter partes hearing interim steps under section 53B of the Act, the IP took the interim step of suspending the premises licence.

6. The substantive review hearing under section 53C was held on 19<sup>th</sup> May 2014. At the conclusion of that hearing the IP decided to revoke the premises licence and declined to vary or withdraw the interim steps measures imposed on 24<sup>th</sup> April 2014. In effect, the IP ratified the interim steps by virtue of its determination.
7. Within the permitted 21 days the Respondent appealed that decision to this court. The earliest date upon which court time and an available tribunal could be found (and that with some considerable difficulty) was October 2014.
8. The Act provides that the decision of the IP of 19<sup>th</sup> May 2014 does not take effect until the conclusion of the proceedings in this court (always assuming that this court does not remit the case back to the IP for further consideration).
9. The Respondent has re-opened the premises and, although presently closed for the month of Ramadan, intends to remain open under the terms of the licence thereafter.
10. The issue, therefore, is whether or not the interim steps are still in force.
11. All three parties assure me that this issue is straightforward and clear. I am afraid that I have not found it so. I do, however, acknowledge that all three Counsel, Mr Rankin for the Applicant, Mr Kolvin for the Respondent and Mr Matthias for the IP, have helpfully been clear in their arguments and also helpfully complied with very stringent directions caused by the time constraints.
12. It is clear that this is purely a case of statutory interpretation.
13. I am firmly of the view that in any case involving the Act, the fundamental rule is that the licensing objectives laid down must underpin any decision. They are set out in section 4 of the Act and are
  - (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

My view is supported by the requirement of the licensing authority (“LA”) to consider the licensing objectives referred to in sections 53B(8)(a) and 53C(2)(b)

An application under section 53 of the Act is concerned primarily with objective (2)(a).
14. While the section 182 Licensing Act Guidance is helpful and authoritative its authority is subordinate to the licensing objectives. The same principle applies

to cases put forward as authoritative unless they are on all fours with the case being decided.

15. I have read all the skeleton arguments, authorities and sundry papers put before me. I have particularly been referred to the decision of District Judge (MC) Knight in *Chief Constable of Cheshire v Oates* 19.12.2011. That judgement is, of course, not binding on me, although obviously I bear in mind the conclusions drawn by my colleague. I have also read the decision of Dingemans J in *93 Feet East Ltd. v London Borough of Tower Hamlets* [2013] EWHC 2716 (Admin). I have, since the conclusion of this hearing also read and considered further submissions and case law relating to its authoritativeness. The Applicant and the IP both say that the decision in *93 Feet East* is authoritative whereas the Respondent says that it is definitely not so and I should disregard it entirely. I will deal with that later on if need be.

16. The starting point is of course the legislation which I set out below.

**53A Summary reviews on application of senior police officer**

(1) The chief officer of police of a police force for a police area may apply under this section to the relevant licensing authority for a review of the premises licence for any premises wholly or partly in that area if—

(a) the premises are licensed premises in relation to the sale of alcohol by retail; and

(b) a senior member of that force has given a certificate that it is his opinion that the premises are associated with serious crime or serious disorder or both;

and that certificate must accompany the application.

(2) On receipt of such an application, the relevant licensing authority must—

(a) within 48 hours of the time of its receipt, consider under section 53B whether it is necessary to take interim steps pending the determination of a review of the premises licence; and

(b) within 28 days after the day of its receipt, review that licence in accordance with section 53C and reach a determination on that review.

.....

**53B Interim steps pending review**

(1) This section applies to the consideration by a relevant licensing authority on an application under section 53A whether it is necessary to take interim steps pending the determination of the review applied for.

(2)The consideration may take place without the holder of the premises licence having been given an opportunity to make representations to the relevant licensing authority.

(3)The interim steps the relevant licensing authority must consider taking are—

- (a)the modification of the conditions of the premises licence;
- (b)the exclusion of the sale of alcohol by retail from the scope of the licence;
- (c)the removal of the designated premises supervisor from the licence;
- (d)the suspension of the licence.

.....

(5)Where on its consideration of whether to take interim steps the relevant licensing authority does take one or more such steps—

- (a)its decision takes effect immediately or as soon after that as that authority directs; but
- (b)it must give immediate notice of its decision and of its reasons for making it to—
  - (i)the holder of the premises licence; and
  - (ii)the chief officer of police for the police area in which the premises are situated (or for each police area in which they are partly situated).

(6)If the holder of the premises licence makes, and does not withdraw, representations against any interim steps taken by the relevant licensing authority, the authority must, within 48 hours of the time of its receipt of the representations, hold a hearing to consider those representations.

(7)The relevant licensing authority must give advance notice of the hearing to—

- (a)the holder of the premises licence;
- (b)the chief officer of police for the police area in which the premises are situated (or for each police area in which they are partly situated).

(8)At the hearing, the relevant licensing authority must—

- (a)consider whether the interim steps are necessary for the promotion of the licensing objectives; and
- (b)determine whether to withdraw or modify the steps taken.

(9) In considering those matters the relevant licensing authority must have regard to—

- (a) the certificate that accompanied the application;
- (b) any representations made by the chief officer of police for the police area in which the premises are situated (or for each police area in which they are partly situated); and
- (c) any representations made by the holder of the premises licence.

(10) In computing the period of 48 hours mentioned in subsection (6) time that is not on a working day is to be disregarded.

### **53C Review of premises licence following review notice**

(1) This section applies to a review of a premises licence which a relevant licensing authority has to conduct on an application under section 53A.

(2) The relevant licensing authority must—

- (a) hold a hearing to consider the application for the review and any relevant representations;
- (b) take such steps mentioned in subsection (3) (if any) as it considers necessary for the promotion of the licensing objectives; and
- (c) secure that, from the coming into effect of the decision made on the determination of the review, any interim steps having effect pending that determination cease to have effect (except so far as they are comprised in steps taken in accordance with paragraph (b)).

(3) Those steps are—

- (a) the modification of the conditions of the premises licence,
- (b) the exclusion of a licensable activity from the scope of the licence,
- (c) the removal of the designated premises supervisor from the licence,
- (d) the suspension of the licence for a period not exceeding three months, or
- (e) the revocation of the licence.

(4).....

(5).....

(6).....

(7) In this section “relevant representations” means representations which—

(a)are relevant to one or more of the licensing objectives, and

(b)meet the requirements of subsection (8).

(8)The requirements are—

(a)that the representations are made by the holder of the premises licence, a responsible authority or an interested party within the period prescribed under subsection 53A(3)(e),

(b)that they have not been withdrawn, and

(c)if they are 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.

(9)Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.

(10)Where a relevant licensing authority determines a review under this section it must notify the determination and its reasons for making it to—

(a)the holder of the premises licence,

(b)any person who made relevant representations, and

(c)the chief officer of police for the police area in which the premises are situated (or for each police area in which they are partly situated).

(11)A decision under this section does not have effect until—

(a)the end of the period given for appealing against the decision, or

(b)if the decision is appealed against, the time the appeal is disposed of.]]

17. As is clear, the LA must consider whether or not interim steps are necessary and must do so within 48 hours of the application for the review and, must, within 28 days of the application, “review the licence in accordance with 53C and reach a determination on that review” The requirement to consider interim steps is in section 53A. The procedure for that is in section 53B.

18. If the LA does take interim steps and “the holder of the premises licence makes, and does not withdraw representations against any interim steps” the LA must hold a hearing to consider those representations and “(a) *consider whether the interim steps are necessary for the promotion of the licensing objectives; and (b) determine whether to withdraw or modify the steps taken*”

It must be noted that here again there is reference to the licensing objectives.

19. All parties agree that, once the LA has made a determination of the review, that decision does not come into effect until the end of the 21 day appeal period or the disposal of the appeal, whichever is the later. This is in accordance with other appeal processes under the Act and means that the premises licence holder is able to enjoy the benefit of the premises licence in its original form for a period (sometimes a long period) despite any decision made by the LA to the contrary.
20. I am not going to rehearse in full the detailed arguments put before me. They have been set out far better by the advocates themselves.
21. Put very simply the Applicant and the IP say that once there has been a determination of the review the interim steps continue and remain in place until the determination takes effect or the LA withdraws them. The Respondent says that that is not the case and the interim steps are purely active between the making of them under 53B and the determination by the LA under 53C.
22. I make no apology for restating the particular subsections, 53B(1), 53C(2)(c) and 53C(11)

**53B Interim steps pending review**

(1) This section applies to the consideration by a relevant licensing authority on an application under section 53A whether it is necessary to take interim steps pending the determination of the review applied for. (*my underlining*).

**53C Review of premises licence following review notice**

.....

(2)(c) secure that, from the coming into effect of the decision made on the determination of the review, any interim steps having effect pending that determination cease to have effect (except so far as they are comprised in steps taken in accordance with paragraph (b)).

.....

- (11) A decision under this section does not have effect until—
- (a) the end of the period given for appealing against the decision, or
  - (b) if the decision is appealed against, the time the appeal is disposed of.]]

23. The intention of section 53B is, in my view clear. It is to set out the requirement of and procedure for a LA to consider if it is necessary to take interim steps. Although a LA is obliged to consider whether or not it should take interim steps under section 53A(2). It is not obliged to take such steps. It states “.....*whether*

*it is necessary to take interim steps pending the determination of the review applied for....*” My understanding of that is the phrase “*pending the determination of the review...*” relates to the period in which it may take such interim steps. It does not relate to the longevity of those steps.

24. All of section 53 is there to deal with premises about which a senior police officer’s opinion is that “.... *the premises are associated with serious crime and disorder or both*”. Such circumstances are, of course, completely contrary to the licensing objectives. It is within this context that one must view the entirety of this section of the legislation. The Respondent raises Human Rights issues in respect of the premises licence holder’s rights to enjoy his property, i.e. the licence. Such rights are of course important, but there must always be considerations of proportionality.
25. I do not think that it is disputed that the consequences of interim steps are severe and clearly the longer such steps are in place the more severe the consequences to the licence holder. Any employment consequences must be considered, and, indeed, financial consequences (although perhaps to a lesser degree. It is no real concern of this court’s if a party makes inordinate profit or substantial loss).
26. The other side of the coin is that if the interim steps simply lapse between the review hearing and the final disposal of any appeal, then premises found to have been associated with serious crime and/or disorder could simply continue to operate unfettered during that possibly lengthy period.
27. The Respondent refers to police powers under sections 161 to 168 of the Act. Those provisions, however, only apply when there is “*likely imminently to be disorder.....or public nuisance*”. Although the initial 24 hour period is renewable I do not accept that those provisions are available for the same situations as are section 53. “*Imminent disorder or public nuisance*” is not, in my opinion, necessarily synonymous with “*associated with serious crime or serious disorder*”
28. [I have to say that I have not had more than a comparatively superficial look at sections 161-168 of the Act. They also seem to be somewhat complex, possibly even more complex than section 53. They seem to describe a procedure that starts with the police, then moves to the magistrates’ court and then back to the LA, with the possibility then of going back to the magistrates’ court, while simultaneously providing for limited appeals to the crown court. It also seems to have similar provisions closing the premises until the determination of a review by the LA, which provisions do not come into effect until the end of the appeal period. If anything, these provisions seem less likely to result in the closure of

premises that the Applicant desires. However, firstly, there has not been a closure order under this section, and so, secondly, I have not heard full argument on these provisions, so these comments are simply “obiter dicta” (if such a thing is possible in this jurisdiction)]

29. If one allows for my interpretation of the meaning of section 53B(1) it allows the meaning of section 53C(2)(c) to become clearer. There is no other provision that deals with the lapse or expiry of the interim steps. Accordingly, section 53C(2)(c) deals with that. It makes it clear that the LA has a duty to resolve what happens to the interim steps. Its responsibility is to terminate the interim steps (the only exception being if the effect of the interim steps continues by virtue of the determination made by the LA). Put simply it must either terminate or ratify the interim steps. That decision does not take effect, however, until the expiry of the period set out in 53C(11).

30. The Respondent complains that that means that if the LA does not ratify the interim steps they nevertheless remain to the disadvantage of the premises licence holder for at least 21 days and longer if the Applicant appeals the LA’s review decision. I do not think that that is necessarily so. I would expect a successful licence holder to make representations to the LA for the withdrawal of interim steps measures. Those representations can be either considered then or, if notice to the police is required, within 48 hours.

31. The time restraints for interim steps to be taken (i.e only pending the determination of the review) does not, in my opinion attach to any application under section 53B(6) for the LA to review the interim steps and, if appropriate withdraw or vary them.

32. I appreciate that the Respondent argues that the time for imposing interim steps is in fact laid down by section 53A(2) and therefore section 53B(1) is superfluous unless it relates to the duration of the interim steps. I do not agree. That something in a statute appears to be repetitive does not mean that one must construe it as having a different meaning. However, I do not believe that it is repetitive. It appears to me to fulfill the same functions of sections 53A(1) and 53C(1) namely to describe more fully than the heading, the function of the section it heads.

33. The Applicant and the IP say that there is no limit to the number of times that a licence holder can make representations to the LA against interim steps measures. The Respondent says that that would lead to a ridiculous situation which could result in an additional 14 hearings (in fact 12 by my calculation) on the same issues before the review hearing. (An opinion with which DJ Knight in

*Oates* agreed). I do not agree. The requirement is only that the LA “*must hold a hearing to consider those representations*” It must be implicit in that that once those representations have been considered they do not have to be considered again. It would only be if there is a change in those representations or in the circumstances supporting the issue of necessity essential to the imposition of interim steps that a further hearing would be required. The determination of a review which did not “ratify” the interim steps would clearly be such a change. If I am wrong on the latter point and there is a possibility of multiple hearings on the same point then, if that is what the legislation says is to happen, then that is what can happen.

34. I have to say that I am not sure what is meant by the word “secure”. I can only conceive that it means “ensure”. If it does my interpretation of that sub-section is that a LA has a duty to ensure that the interim steps cease upon the determination becoming effective. This would in fact make sense if one reads section 53C(11) literally. Sub-section (11) relates to “*A decision under this section*”, Section 53C deals with the review and not with the interim steps. If interim steps measures do not cease upon the determination by the LA or lapse for any other reason then this requirement on the LA ensures that the interim steps measures do not continue for an indefinite period (even beyond section 53C(11), which, after all only refers to a decision made under section 53C and not any decision under 53B) and are truly “interim”. It requires the LA to address the issue of the interim steps measures at the review hearing..
35. In my view, the result sought by section 53C(2)(c) is that the interim steps do not continue after the coming into effect of the review decision which would otherwise be the case. The position therefore is that interim steps remain until the until the expiry of the period set out in 53C(11).
36. The Respondent asserts that this could have the effect that where the LA has imposed far less onerous conditions or even found that the police contentions are without any substance, the interim steps restrictions would nevertheless remain in place until 21 days had elapsed or longer if the police appealed the LA’s decision and that that cannot be right.
37. I agree with him that such a consequence would not be right. However I cannot see that that would happen if the interpretation was as I have outlined above. It would also not involve any insertion of words or complex statutory interpretation.
38. The Applicant and the IP state that there is no restriction on the number of times a licence holder can make representations for the interim steps to be withdrawn

under section 53B. (There also seems to be no time constraint limiting such applications to before the determination hearing) That is the literal reading of section 53B(6) and indeed fits in to the general interpretation of the Act. For example, if the review “ratifies” the interim steps and is appealed by the licence holder, and, as in this case there is some delay until the appeal can be heard, the interim steps remain in force, but there is no reason that I can see that would prohibit the licence holder from making post determination representations to the LA where there was a change of circumstances. This would allow for early reconsideration of the position where there was no longer a necessity for the interim steps, but the appeal continued because of argument over some of the conditions imposed by the LA.

39. The Respondent refers the decision in Oates and says that it is impossible that the legislation should mean that there can be unlimited interim steps hearings under section 53B(8). The Respondent also asks me not to take literally the absence of any section other than sections 53C(2)(c) or 53B(8) terminating the interim steps as meaning that the expiry of interim steps is only from when either the LA hears representations under section 53B(8) and withdraws or varies the interim steps or the determination under section 53C(2) becomes effective under section 53C(11). I am afraid that I cannot see how I can do other than take the legislation literally.
40. The LA clearly has an obligation to take action in respect of the interim steps during the section 53C review hearing. It is necessary for them to reconsider the interim steps at the end of the review and make it clear that either they continue through the decision reached or are withdrawn by the LA under their powers contained in section 53B. (It is also clear that a pre-condition of imposing the interim steps is necessity and that must still be a consideration for the LA when considering the position.) I reiterate that the only way of terminating the interim steps before the coming into effect of the determination, as far as I can see, is under section 53B(8).
41. It is suggested by the Respondent that the whole procedure lacks the checks and balances needed in procedures that deprive someone of a proprietary interest. I do not agree. Firstly, there must be consideration by a senior police officer. Secondly, the LA must consider interim steps within 48 hours. Thirdly, the LA must reconsider the issue within 48 hours of any representations being made, and fourthly, the interim steps must again be considered by the LA at the review hearing. The assumption must be that the LA will act conscientiously and in

accordance with the appropriate law. I accept that there is no automatic right of appeal just for interim steps, but I see nothing in that.

42. I would also think that it would be unlawful for a LA not to “ratify” or withdraw the interim steps at the determination of the review, (or at least to ensure that there was an early hearing to hear representations under section 53B(8) and consider the need for any interim steps to continue pending the coming into effect of the review determination.
43. If I am wrong in the above then the position would be that where a senior police officer has asked for a review of the licence because the premises are associated with serious crime and/or serious disorder; and where the LA has decided that it was necessary to impose interim steps upon application and also refused to withdraw such interim steps upon application; and where the LA has, at a full review hearing, decided to “ratify” those interim steps; and, finally, where, so far as I am aware there are no equivalent steps that can be taken elsewhere in the legislation, the interim steps simply fall away. In my view that must be entirely wrong.
44. Firstly, if one takes section 53B(6) literally the licence holder has the opportunity to make representations right up until the coming into effect of the review determination.
45. Secondly, the LA must enforce the licensing objectives throughout and a result that is contrary to those objectives must be wrong.
46. The Respondent has referred to proprietary acts. He is quite right to say that a premises licence is an item of property that its owner is entitled to enjoy. That right however is not completely unqualified. Even the case of *Hartnell* referred to qualifies the right by adding “...and subject also, of course, to the welfare or public health power of the local authority” However, even without that, the rule is applicable where there is a doubt about interpretation. I do not have a doubt about interpretation in this case.
47. So far as any human rights argument is concerned I would repeat the above and add that, in my opinion, this legislation is in any event proportionate, dealing as it does with the necessity to prevent serious crime and disorder.
48. So far as the section 182 Guidance is concerned, it appears in fact to be, at most, neutral. In any event it is subordinate to the Act. The decision in *Oates* is, in any event, not binding upon me and, I think is wrong. I do also agree with the IP that it is difficult to see how a decision which admits to a complete inability to comprehend the legislation is of assistance. I have considered the legal text

books, however they fail to persuade or convince me to come to a different view from that which I have stated above.

49. Finally, I have not considered whether or not the decision in *93Feet East* is authoritative or not as I have not relied on it in reaching my decision.

50. Accordingly, I find that the interim steps are still in force and therefore any sale by retail of alcohol by the Respondent is unauthorised at the present time.

22<sup>nd</sup> July 2014

Westminster Magistrates' Court.

District Judge Elizabeth Roscoe (MC)