

il Institute of Licensing
2021
25th National Training Conference

cornerstone
barristers

Drafting appeal-proof decisions
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@instoflicensing
#NTC2021

Overview

Top tips

Premises licensing decisions

Taxi licensing decisions

Top tips

No more than 1-2 pages (generally)

States the decision at the beginning

Summarises arguments for decision

Summarises arguments against decision

Strikes a balance

A good decision notice

Legal principles

Exercise of
discretion

Not necessarily
one right
decision

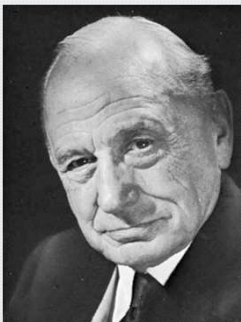
Full and clear
reasons
respected on
appeal

The Judge over your shoulder


"That does not mean to say that the court of appeal ... 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 it ought not lightly to reverse their opinion.

It is constantly said (although I am not sure that it is always sufficiently remembered) that **the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below was wrong**, not merely because it is not satisfied that the judgment was right."

Stepney Borough Council v Jaffe [1949] 1 KB 599, DC



The Judge over your shoulder



"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.**"

R (Hope & Glory) v Westminster CC [2011] EWCA Civ 31

Premises Licence case study: some facts



- New premises licence application for pub / bar with daytime food offer.
- Area: near to high street but predominantly residential. No outside area.
- Previous pub premises licence revoked recently due to frequent ASB / disorder / crime linked to poor management, poorly controlled upright drinking of low priced alcohol, and uncontrolled numbers.
- Alcohol: 0100hrs Sun – Thur; Fri / Sat 0200hrs
- Recorded Music (DJ, but no dancefloor) Fri / Sat 0130hrs
- Food from pub kitchen: 1800hrs Sun – Thur; Fri / Sat 2200hrs
- Police object seeking cut back to traditional pub hours and / or conditions on SIAs, CCTV, incident / refusals book, limit on numbers
- EHO objects seeking cut back to traditional pub hours and / or conditions on noise limiter, sound proofing, door / windows
- 5 Residents, plus Residents' Association object because of past history of premises, residential area, noise breakout and ASB, parking, lack of engagement.
- Applicant says they are nothing to do with previous management. Two residents claim they are linked.

Issues to be considered by LSC



- Area and balance between residential / commercial; proximity of residential premises.
- View on previous licence in this location, cause(s) of concerns, and extent to which they would be an issue for this application.
- Extent to which new applicant is linked to previous applicant and might be culpable for previous issues.
- Nature of application and offer. Experience and abilities of proposed PLH / DPS
- Strength and weight to be given to:
 - Application (how well thought through) and applicants (response to issues)
 - Police / EHO / Residents on the prevention of crime and disorder
 - Police / EHO / Residents on the prevention of public nuisance
- How will smokers be regulated given there is no outside area?
- Bearing in mind this is a new licence, to what extent could conditions meet any concerns. Start with Operating Schedule, then those raised in reps, then other conditions? Capacity?
- If conditions would not meet the concerns, bearing in mind this is a new licence, to what extent would a reduction in hours meet the concerns or achieve an appropriate balance? Sun - Thur hours; Thur hours; Fri and Sat hours; Fri or Sat hours; Sunday hours; morning hours.

Drafting the decision: general points



Checklist

- Summary of application (and what LSC thinks of operating schedule).
- Summary of Police / EHO / Residents' Reps (and what LSC thinks of them).
- Which licensing objectives are engaged?
- Which parts of s.182 Guidance and Council's Policy are relevant? Cross check with Officer Report, those raised by applicant or in reps, both in writing and at hearing.
- Previous licence and revocation. Relevance now. View on link to applicant and management now.
- Likely effect of grant (with Operating Schedule and other agreed conditions) on licensing objectives. Regulation of smokers outside at late hours.
- Need to resolve any particular issues of fact / judgment raised at hearing?
- Further conditions considered. Are they appropriate and proportionate? Including restriction on capacity.
- If conditions would not meet concerns, reduction in hours.
- New licence and availability of review if things go wrong.
- Balance: promoting licensing objectives, conditions, hours.

Drafting the decision contrary to the applicant



Might include:

- Consideration of residential aspects of area. Proximity of residential premises. e.g. families with children
- Weight given to Police / EHO as responsible authorities
- Weight given to residents and Residents' Association
- Any evidence of lack of engagement / lack of thought to application / lack of thought to previous issues with licence in this location
- Any concerns as to lack of experience of applicant
- Connection of applicant to previous premises and lack of confidence that conditions would be complied with
- Not satisfied that conditions would meet concerns
- Justification for any reduction in hours
- Explain why points made by applicant are rejected (e.g. further conditions)
- Acknowledge balance to be struck, but LSC's view...

Drafting the decision contrary to the objectors



Might include:

- Consideration that this is the location of previous licensed premises. Proximity of high street e.g. hours and availability of transport
- Weight given to application (properly thought through), applicant (good experience).
- Any evidence of partnership response by applicant to issues raised (shows responsible). Confidence
- No connection of applicant to previous premises. Any way to distinguish operation proposed now from previous operation.
- New premises licence. Inappropriateness / disproportionality of further conditions at this stage
- Availability of review if concerns of objectors come to fruition
- Further conditions to meet residual concerns
- Explain why points made by objectors are rejected.

Cumulative Impact Policy Decisions



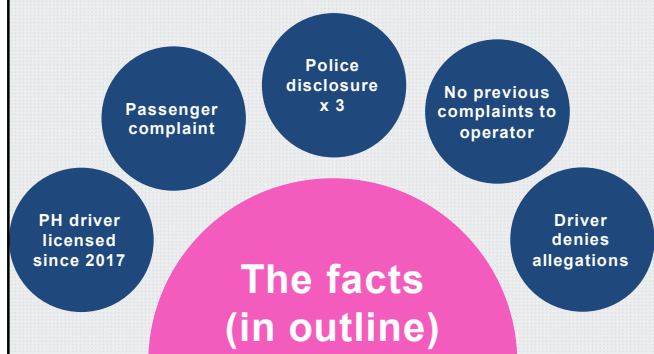
- Quote the policy – it should set the framework for the decision.
- What are the cumulative impact issues here?
- What does the policy text say about the reasons for formulating the CIP in this particular area (e.g. types of premises / operations which are in issue). Do they apply here?
- Acknowledge that this gives rise to a presumption which can be rebutted.
- Each case on its merits
- Acknowledge that it is for the applicant to demonstrate that the likely effect here will not add to cumulative impact issues.
- Has the applicant demonstrated that he comes within any recognised exceptions to the policy?
- Has the applicant demonstrated that the presumption has been rebutted such that the licence can be granted (with conditions), and the licensing objectives promoted?
- Fuller, case specific, reasons for granting a new licence in a CIA will prevent others seeking the same or arguing inconsistency / unfairness in approach.

Final reminders

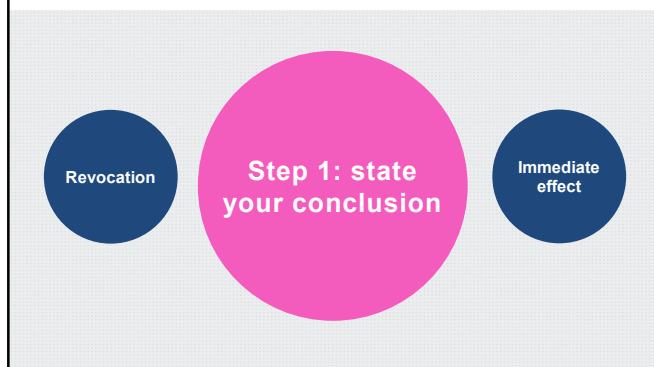


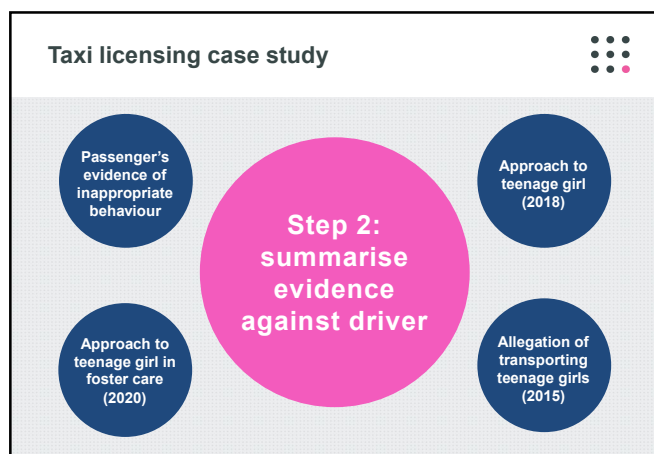
- The reasons must come from the LSC
- But, understanding the issues / having checklists should provide prompts for discussion to understand and reason the decision.
- As a rule of thumb, reasons might best be directed to explain to the losing party why they have lost. Also having regard to who might appeal.
- Promoting Licensing Objectives, having regard to s.182 Guidance, having regard to Licensing Policy, should provide a basic checklist.
- Whilst it is each case on its merits, consistency in decision making is also a consideration.
- These are public decisions which will remain on the Council's records.
- For those reasons, it is prudent to take the 5 working days to produce the decision with reasons (if practicable)
- Include appeal rights

Taxi case study

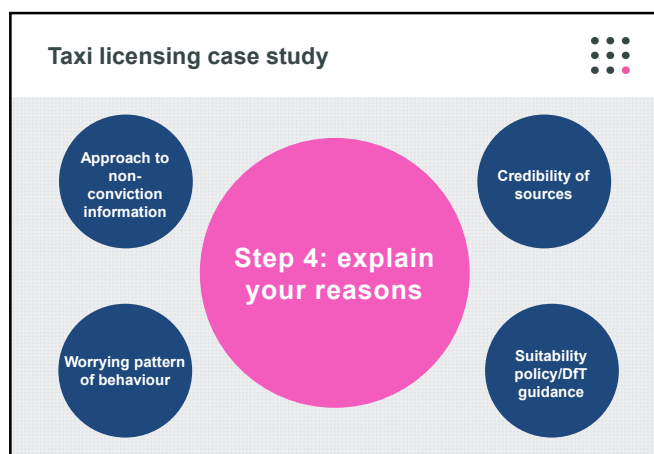


Taxi licensing case study











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