



Courts and Tribunals Judiciary

IN THE WESTMINSTER MAGISTRATES' COURT

LICENSING ACT 2003

BETWEEN:

THE SOHO SOCIETY

Appellant

-and-

WESTMINSTER CITY COUNCIL

First Respondent

-and-

THE GREEN ROOM DISTILLERY LTD

Second Respondent

RULING

Introduction

1.The Soho Society appeals the decision of the Licensing Sub-Committee (LSC) of Westminster City Council to grant a premises licence to The Green Room Distillery Ltd (TGRD) for a gin distillery and tasting rooms at 13 Meard Street, a Grade II* listed building.

2.The applicant raises concerns about public safety, particularly fire safety, due to the storage and use of highly flammable ethanol. The applicant argues that the LSC relied on incorrect evidence from Mr. Doyle of the London Fire Brigade, admitted late without proper notice, and failed to impose adequate conditions to mitigate the risks. The applicant further submits that the LSC did not properly consider cumulative impact and that the conditions imposed were insufficiently precise or failed to address the issues raised.

Legal Framework and Standard of Review

3.In determining this appeal there is a well-established legal framework. The law is not in material dispute as between the parties, A summary of the principles are as follows; I must have regard to the licensing authority's Statement of Licensing Policy and the Revised Guidance issued by the Secretary

of State under section 182 of the Licensing Act 2003. While the court may depart from the policy or Guidance where the circumstances justify it, any such departure must be supported by clear and reasoned justification (Revised Guidance, para 13.8).

4. The nature of the appeal is a rehearing on the merits (*R (Hope and Glory Public House Ltd) v Westminster Magistrates' Court* [2011] EWCA Civ 31), but not a wholly fresh hearing.

5. The court must consider whether, on the evidence now before it, the original decision was wrong. The licensing authority remains the primary decision-maker, and the burden lies on the appellant to demonstrate that the decision should not stand. Licensing decisions involve the exercise of discretionary judgment, and the magistrates' court must give weight to the authority's reasoning where it is clear and justified (per Stanley Burnton LJ in *Hope and Glory*; see also *Marathon Restaurant v Camden LBC* [2011] EWHC 1339 (Admin)). Hearsay evidence is admissible in licensing appeals, though the weight accorded depends on its source, nature, and plausibility (*Leeds CC v Hussain* [2002] EWHC 1145 (Admin)).

6. Events occurring after the original decision but before the appeal may also be relevant, and the court must provide reasons for any departure from the statutory Guidance (*Daniel Thwaites Plc v Wirral Magistrates' Court* [2008] EWHC 838 (Admin)).

7. Conditions attached to a licence must be necessary, proportionate, clear, enforceable, and appropriate to the promotion of the licensing objectives, which are: the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm. Conditions may address issues such as fire safety, emergency access, first aid, communication with authorities, safe dispersal, CCTV, waste disposal, and capacity limits.

8. The court may amend or substitute conditions when justified.

9. The Licensing Act 2003 governs the retail sale of alcohol, excluding sales to traders or clubs, sales under alternative authorisation, and alcohol distillation, which is regulated separately under DSEAR and HMRC regimes. Under section 181 and Schedule 5 of the 2003 Act, the magistrates' court has the power to dismiss the appeal, substitute a different decision that the licensing authority could have made, or remit the matter for reconsideration with directions.

10. Thus, The appeal is by way of rehearing as set out in the seminal case of ***R (Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31, [2011] PTSR 868**. However, this is not a de novo hearing in the strictest sense of the phrase.

11. The function of the Court is not to substitute its own discretion for that of the local authority but to determine whether the licensing authority's decision should be upheld or departed from. The test is whether, based on the evidence as it now presents itself before me, the original decision if in fact wrong?

12. As per Stanley Burnton LJ in ***Hope and Glory (Supra)***, the local authority is the primary decision-maker. The burden lies on the Appellant to persuade the Court to depart from the authority's determination. Where, as here, the authority has given detailed and reasoned consideration to the issues raised, those reasons are entitled to be given weight by the court.

13. The sale of alcohol to the public is regulated by the Licensing Act 2003 ("the 2003 Act"). The Act applies to the sale by retail of alcohol, which excludes sales to traders, clubs, personal licence holders, premises licence holders, and temporary event notice holders. The Act empowers local

authorities to grant licences and impose conditions necessary for the promotion of the licensing objectives, including public safety.

14. It is important to ***note that distilling alcohol is not a licensable activity*** under the 2003 Act. The distilling process itself does not involve the sale of alcohol by retail and is governed by separate regulatory regimes, including the Dangerous Substances and Explosive Atmospheres Regulations 2002 ("DSEAR") and the HMRC regime. These regimes provide comprehensive control over the risks associated with distilling activities, including fire safety.

15. In the context of licensing appeals under the Licensing Act 2003, the magistrates' court has several powers to ensure a fair and comprehensive review of the licensing authority's decision. Upon an appeal, the court can:

- **Dismiss the Appeal:** If the court finds no merit in the appeal, it can uphold the original decision made by the licensing authority.
- **Substitute the Decision:** The court has the authority to replace the decision being appealed against with any other decision that the licensing authority could have made. This means the court can impose different conditions or make alterations to the original decision.
- **Remit the Case:** The court can send the case back to the licensing authority with specific directions on how to handle it. This allows the licensing authority to reconsider the application in light of the court's guidance

The evidence

Summary of Oral Evidence

16. I heard detailed oral evidence from a range of witnesses concerning the application for a premises licence at 13 Meard Street, Soho,

17. What follows is a summary, not a verbatim transcript, of the oral evidence I heard . It is intended to fairly and accurately capture the key points and essence of the evidence given during the proceedings. A full note of the evidence I heard is not necessary to recite fully here.

18. Mr Price, an expert in fire and explosion risks with experience authoring over 800 risk assessments, he has provided expert reports for this appeal. He emphasised the fundamental principle of ALARP (As Low As Reasonably Practicable) and stated unequivocally that the proposed distillation activities posed an unacceptable hazard. He advised that the risk could only be properly mitigated by eliminating the hazard altogether—namely, by not permitting distillation at the premises. In his professional opinion, no reputable DSEAR (Dangerous Substances and Explosive Atmospheres Regulations) consultant would sign off on the installation due to the presence of flammable ethanol and inadequate ventilation and escape provisions. He further expressed concern about the potential for societal harm in the event of a fire or explosion, especially given the vulnerability of the residential occupants above.

19. Mr Cave, the long-standing resident and freeholder of the property above, gave evidence regarding the significant anxiety and distress caused by the proposal. He stated that the application was brought forward without proper consultation and that the previous use of the basement had not involved public access. He expressed alarm at the idea of flammable substances being introduced beneath his home and anticipated further disruption from customer traffic associated with tasting sessions.

20. Tim Lord, speaking on behalf of the Soho Society, echoed these concerns. He noted the community's growing frustration with the cumulative impact of commercial activities in Soho, exacerbated by recent changes to planning law—specifically the widening of Class E, which allows light industrial uses without a planning application. Mr Lord stated that the proposal to install a distillery beneath residential property was unsafe and should not be permitted, warning of the precedent such a decision might set. He also criticised the apparent inconsistencies in the regulatory process and the lack of clarity over conditional safety requirements.

21. Planning officers from Westminster City Council confirmed that the distillery use, as currently described, fell within Class E and therefore did not require planning permission. However, they also acknowledged that no schedule of works had yet been submitted, and that listed building constraints might pose further barriers to implementation.

22. Mr James Hayes, a principal licensing officer at WCC, confirmed that the sub-committee had accepted late evidence without express consent from all parties. He accepted that the council had not commissioned independent expert evidence to counter Professor Price's report, despite its significance. He also acknowledged that cumulative impact assessments (CIA), while part of the council's policy framework, were not explicitly addressed in the sub-committee's reasoning.

23. Mr Drayan, an environmental health officer with over 30 years' experience, confirmed he had responsibility for reviewing licence applications but conceded she was not an expert in explosion risk or distillery safety. He acknowledged that this was the first micro-distillery application she had reviewed in her licensing role. While he maintained a neutral stance on the application, he accepted that compliance with the proposed "works condition" would be challenging and might ultimately render the licence inoperable. He further acknowledged that Professor Price's expertise in this area exceeded his own, and that the Ballam fire—raised during the consultation period—had influenced the risk assessment approach.

Discussion and conclusion

24. I have carefully considered all the arguments and material placed before me. This includes the submissions from all parties, the evidence presented, and the relevant legal and regulatory frameworks. It is neither necessary or proportionate to refer to every line of evidence or every word said in submissions, however, my decision is based on a thorough review of the facts and the applicable law, ensuring that all pertinent issues have been addressed, whether I have made express reference to a matter is in this ruling or not.

25. As foreshadowed I keep in mind that distilling alcohol is not a licensable activity under the 2003 Act.

26. The distilling process itself does not involve the sale of alcohol by retail and is governed by separate regulatory regimes, including the Dangerous Substances and Explosive Atmospheres Regulations 2002 ("DSEAR") and the HMRC regime. These regimes provide comprehensive control over the risks associated with distilling activities, including fire safety.

27. This distinction is significant because it means that a still can be installed on premises, provided that the necessary planning permissions are obtained, with or without a licence. Consequently, the distillation process can occur independently of the licensing regime which only governs the retail sale of alcohol.

28. This is separation allows for a unique operational flexibility: the distilled products can be distributed and sold through alternative channels without necessitating a premises licence for retail alcohol sales.

29. This could include wholesale distribution, online sales, or other non-retail avenues, thereby circumventing the stringent requirements and restrictions typically associated with the retail sale of alcohol. This regulatory nuance provides distillers with a broader scope of operational freedom and potentially reduces the administrative and financial burdens associated with obtaining and maintaining a premises licence.

30. On one view, because under the Licensing Act 2003, distilling is not classified as a licensable activity and does not directly regulate the act of distilling itself, the appeal must fail there without the need for further consideration.

31. While the argument that distilling is not a licensable activity under the Licensing Act 2003 has merit, it is essential to evaluate the broader implications and regulatory requirements comprehensively.

32. I have therefore considered the full merits of the appeal, including the public safety concerns and the conditions imposed by the Council, to ensure a comprehensive and fair assessment of all issues raised.

33. This includes examining the potential impact on public safety and adhering to any conditions set forth by the Council to ensure that all aspects of the case are thoroughly and fairly addressed.

34. The primary concern raised by the appellant is the alleged fire risk posed by the distilling activities at the premises. However, since distilling is not bound by the requirement for a premises licence, revoking the licence cannot address the alleged fire risk.

35. The distilling activities can continue regardless of whether the licence is upheld. Furthermore, the licence allows the Council to impose conditions that provide additional control over the fire risk, thereby promoting the public safety licensing objective.

36. The “works condition” seeks to do precisely this. The premises licence granted to TGRD includes a works condition that must be satisfied before any licensable activities can take place. This condition requires the premises to be assessed as satisfactory by the Council’s Environmental Health Consultation Team (EHCT). The EHCT review shall require, as a minimum, satisfactory certification or information relating to building control, electrics, emergency lighting, fire risk assessment, and ventilation.

37. The works condition is a crucial safeguard that ensures the premises meet all necessary safety standards before commencing licensable activities. It provides an additional layer of regulatory scrutiny and control, addressing the public safety concerns raised by the appellant. The condition ensures that the premises will not operate until all relevant safety measures are in place and verified by qualified professionals.

38. It could be said that the conditions imposed by the Council may be so restrictive as to effectively halt the venture before it begins. The requirements, including obtaining a lease and other necessary consents, may present significant obstacles that could prevent compliance. If these conditions are overly burdensome or unattainable, they could undermine the feasibility of the distilling operation, thereby negating the initial argument's practical benefits.

39. The Council and the Court are entitled to rely on the DSEAR regime to regulate the fire risk from the distillery. The DSEAR imposes duties on employers to compile and keep up-to-date risk assessments, ensure that risks are eliminated or reduced as far as reasonably practicable, classify places where explosive atmospheres may occur, and ensure overall explosion safety is verified by competent persons. The Health and Safety Executive ("HSE") enforces this regime and has the power to inspect premises, require health and safety improvements, prohibit actions or activities, and compel the provision of relevant information.

40. The submission that the condition does not act to prevent fire safety and is merely a sop is an inaccurate description.

42. I am satisfied the issues raised regarding fire safety are adequately addressed by the conditions imposed, which ensure that all necessary safety measures are in place before any licensable activities can commence. Furthermore, the concerns related to planning and listed building consent fall outside the scope of this appeal.

43. These matters are governed by separate regulatory regimes and are not within the jurisdiction of this court to adjudicate in the context of this licensing appeal. As set out at paragraphs 14.65 and 14.66 of the section 182 Guidance, planning and licensing serve distinct purposes: planning deals with the principle of land use, while licensing is concerned with the operational management of premises.

44. This distinction was affirmed in *R (on the application of Blackwood) v Birmingham Magistrates & Ors* [2006] EWHC 1800 (Admin). The works condition in question properly confines itself to operational considerations and does not trespass into matters reserved for the planning regime.

45. The appellant's case on cumulative impact is not supported by the evidence. The Council's policy requires shops seeking a liquor licence to demonstrate that **they will not add** to the cumulative impact within the Cumulative Impact Zone. The cumulative impact referred to in the policy arises from the number of people in the area late at night, many of whom are intoxicated. TGRD has demonstrated that it will not add to this cumulative impact because it will not permit late-night drinking and will close at 18:00 Monday-Wednesday and 20:00 Thursday-Saturday.

46. The conditions imposed by the Council, which were agreed by TGRD, include limits on the number of members of the public who can access the premises at any one time, restrictions on the hours of operation, and a requirement for the risk assessment to be reviewed and approved by the Council's environmental health team before any operations can begin. These conditions ensure a higher level of regulatory scrutiny and control over the premises, thereby addressing the alleged fire risk.

Conclusion

47. In these findings, I do not dismiss the fire risk or diminish the concerns raised by the Soho Society.

48. These concerns are real and merited. However, the legal framework requires me to focus on the correct test, rather than sympathy for one cause over another. In applying that test, I cannot conclude that the Licensing Sub-Committee (LSC) was wrong in its decision. The conditions imposed and the reliance on other regulatory regimes provide adequate safeguards to address the fire risk and promote public safety.

48. For the reasons set out above, the appellant's case must fail.

49. The distilling activities are not a licensable activity under the 2003 Act and are governed by separate regulatory regimes that adequately address the risks associated with distilling. The conditions imposed by the Council provide additional control over the fire risk and promote the public safety licensing objective.

50. The appellant's concerns regarding cumulative impact are not supported by the evidence, and the conditions imposed are sufficient to address the issues raised.

51. Great weight was placed on apparent procedural irregularities by the LSC in regard to receipt and its consideration of the evidence of Mr Doyle, it was submitted that the LSC erroneously placed great weight on his evidence and were consequently led into error, I remind myself these are not public law Judicial review proceedings and it is not open to me to consider whether , on public law grounds, such an irregularity vitiates the LSC's decision, this fits with the accepted principles of appeals under the Licensing Act as including that the court ought not be concerned with the way the licensing authority approached their decision or the way it was made but rather to consider the evidence as it is now and decide if , in light of any findings, the original decision was wrong, the " procedural irregularity" point is therefore someone redundant . It may well have been irregular and caused evidence, which was not disclosed, to be considered , but I am satisfied that on the evidence as it is now the decision was not in error.

52. The appeal is therefore dismissed, and the decision of the Licensing Sub-Committee to grant the premises licence to the Green Room Distillery Ltd is upheld, it was not wrong then and is not wrong now having regard to the evidence before me.

53. I have considered whether it is necessary to amend the current conditions imposed by the Licensing Subcommittee. However, I am satisfied that the existing regulatory regimes sufficiently address the identified fire risks. These matters are adequately covered by the existing works condition as currently drafted, and no amendments are therefore required.

Senior District Judge Paul Goldspring (Chief Magistrate) for England and Wales

13.6.25