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Neutral Citation Number: [2015] EWHC 14 (Admin)

Case No: CO/4652/2014

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/01/2015

Before :

JOHN HOWELL QC

Between :

SHARANJEET LALLI

Claimant

- and -

**THE COMMISSIONER OF POLICE FOR THE
METROPOLIS (1)**

Defendants

**THE COUNCIL OF THE LONDON BOROUGH
OF NEWHAM (2)**

Jeremy Phillips (instructed by Dadds LLP) for the Claimant
**Philip Kolvin QC and Asitha Ranatunga (instructed by the Director of Legal Services,
Metropolitan Police) for the First Defendant**
**Gerald Gouriet QC and Paddy Whur (instructed by Woods Whur) for the Second
Defendant**

Hearing dates: 16th December 2014

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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JOHN HOWELL QC

John Howell QC :

1. This claim for judicial review is concerned with the circumstances in which a summary review by a licensing authority of a premises licence that authorises the sale of alcohol may be invoked and whether, and (if so) how, that authority must satisfy itself that they exist.
2. Under the Licensing Act 2003 (“the 2003 Act”), the chief officer of police for the area in which the premises are located can apply to the relevant licensing authority for a summary review of such a licence. The application must be supported by a certificate given by a senior member of that police force stating that in his opinion “the premises are associated with serious crime or serious disorder or both”. The summary review has to be determined by the licensing authority within 28 days after the date on which it receives the application. That authority also has the power to impose “interim steps” pending the determination of that review, which include suspending the licence, modifying its conditions or excluding the sale of alcohol.
3. On behalf of the Claimant, Mr Jeremy Phillips contends that the mere occurrence of serious crime or serious disorder at the licensed premises is insufficient to justify a senior member of the police force giving the certificate that must support any application for a summary review. For the premises to have become “associated with serious crime or serious disorder”, there must be a pattern of such behaviour there that would lead a reasonable person to associate the premises with serious crime or serious disorder or both. Mr Phillips submits that the basis for such an association may be found only in either (a) a series of such serious crimes or serious disorders or (b) a single incident that provides evidence of such a pattern. Mr Phillips further contends that, once an application for summary review has been made to the licensing authority, that authority has to review whether the premises are associated with serious disorder or serious crime and that it should not proceed with the summary review if it is not satisfied, or if it considers that the senior member of police who gave the certificate could not reasonably have been satisfied, that such an association exists. Such are the “draconian” consequences of a summary review that the precondition (which has to be satisfied before it may be invoked) should be strictly construed and the licensing authority must satisfy itself that it has been met.
4. In this case, so Mr Phillips submits, the opinion of the senior member of the relevant police force was based on a single incident at the licensed premises and the facts cannot be characterised on any basis as being of such a nature as to create in the mind of any reasonable person the association of the premises with serious crime required by the legislation. The certificate was accordingly invalid.
5. Moreover, so he submits, the licensing authority should not have proceeded with the summary review, and it should not have suspended the licence pending the determination of the review (as it did), given the available information about the alleged association. It could not reasonably have been satisfied that the premises were associated with serious crime or serious disorder, or that the senior member of the police force who gave the certificate could reasonably have been satisfied that they were, and it made no such finding.

FACTUAL BACKGROUND

6. The Claimant, Mrs Sharanjeet Lalli, is the holder of a premises licence granted in April 2010 the relevant licensing authority, the Council of the London Borough of Newham ("the Council") that authorises the sale of alcohol by retail at the William the Conqueror Public House in Romford Road, Newham. She is also the designated premises supervisor under that licence. Guidance issued to licensing authorities by the Secretary of State under section 182 of the 2003 Act states that such a person is the key person usually responsible for the day-to-day management of the premises including the prevention of disorder.
7. On July 27th 2014 a man was seriously injured at the pub. He suffered a large bleed on the brain. He remained in a coma for a not inconsiderable period (at least until August 13th 2014).
8. The Claimant's husband, Mr Surjit Lalli, who was managing the pub at the time, has been charged with assault occasioning actual bodily harm and a customer has been charged with causing grievous bodily harm. It appears that both have pleaded not guilty. It is necessary, therefore, to emphasise that what in fact those individuals may or may not have done is not a matter that falls to be determined on this claim for judicial review. What is significant in relation to this claim is what, on the basis of the information then available, the chief officer and senior member of the metropolitan police and the licensing authority respectively may have thought had occurred (not unreasonably) when reaching any decision under the 2003 Act.
9. During the previous four years in which the Claimant had held her licence, there had been no serious crime or disorder at the premises.
10. The police were only notified of the incident on July 28th 2014, the day after it occurred, by a staff nurse at the hospital to which the injured man had been taken.
11. On July 29th 2014, having viewed CCTV footage of the incident, a senior member of the metropolitan police, Superintendent Nash, gave a certificate under section 53A(1)(b) of the 2003 Act stating that in his opinion the premises were associated with serious crime.
12. On the same day the Chief Officer of Police for the Metropolitan Police Area applied under section 53A of that Act to the Council for a review of the Claimant's premises licence.
13. From the information then available to the police, it appeared that the man, who had been injured, had previously been barred from the pub but had been allowed to use it again. He had arrived there at about 6 pm; he had been drinking since then; and had taken a liking to a woman, who was with her brother and boyfriend. The man who was injured had started to cause a disturbance. At about 10.30pm he was asked by Mr Lalli to leave. It appeared that Mr Lalli had then got customers involved in ejecting the man. Mr Lalli could be seen on CCTV kicking the man when on the ground inside the pub in the buttocks and in the area of his head. Customers took the man out through a side entrance to the public house. One of the men who had been with the woman could then be seen throwing a punch that connected with the man's head knocking him over. A customer who came out of the pub afterwards saw the man

lying on the ground and called an ambulance. It appeared to the police that no one working at the pub had looked after the victim. Not merely had they failed to call the ambulance, they had also failed to call the police or the licensing authority, thus hindering the investigation of the incident. The police considered that there had been a catastrophic failure in the management of the premises and that immediate suspension of the premises licence was necessary to prevent further such incidents at the pub.

14. Later that day, on July 29th 2014, a sub-committee of the Council's licensing committee considered whether it was necessary to take interim steps pending the determination of the summary review. Having heard from PC Padda, who is the licensing officer for the borough for the Metropolitan Police, the sub-committee decided to suspend the Claimant's licence with immediate effect until the determination of the summary review. It thought that suspension was necessary for the purpose of the prevention of crime and disorder in view of the incident that had occurred at the premises. The letter communicating that decision to the Claimant stated that the sub-committee would hold a hearing into any representations about interim steps that it had imposed within 48 hours of receiving them.
15. Representations were made on the Claimant's behalf but, following a hearing on August 6th 2014, the Sub-Committee decided to continue the suspension of the Claimant's premises licence. The sub-committee were concerned about the seriousness of the incident; the failure by the Claimant, who had been upstairs at the time, to investigate what had occurred downstairs and to contact the police; and her absence from the premises as an active manager when the police had previously visited them. The sub-committee had no confidence that she would run the premises responsibly if any further incidents occurred.
16. The sub-committee held further hearings on August 13th 2014 and August 26th 2014 to reconsider the interim steps it had imposed. Having heard further representations, they decided that it was appropriate for the promotion of the licensing objectives that the suspension of the Claimant's premises licence should remain in place. At the hearing on August 13th 2014, the Sub-Committee found that, when the man had been knocked down outside the pub, someone other than Mr Lalli had put the victim into a recovery position and that Mr Lalli had tried twice, inappropriately, to pull the victim up by his hands whilst he was on the ground and in the recovery position. It found that, although the incident might have been one off, it was serious and one in respect of which the Sub-Committee considered that it was proper to invoke the summary procedure for review.
17. On August 26th 2014, the Sub-Committee also determined the summary review. They did so having themselves viewed CCTV footage of the incident. The Sub-Committee decided that the Claimant's premises licence should be revoked as, in their view, the incident on July 27th 2014 "clearly demonstrated a catastrophic failure in the management of the premises and is clearly not promoting the licensing objectives".
18. The Claimant has appealed against that decision to the Magistrates Court (as she had a right to do) with the result that that decision does not have effect until her appeal is disposed of. The appeal has been listed before the Thames Magistrates' Court on January 7th 2015. It has not been suggested that the interim step imposed, namely the suspension of the Claimant's premises licence, does not continue until that appeal has been disposed of.

THE STATUTORY BACKGROUND

(a) The requirement for a premises licence

19. Under section 136 of the 2003 Act it is an offence to sell alcohol (or knowingly allow it to be sold) by retail on or from any premises without an authorisation. Such an authorisation can be given by a premises licence granted by a licensing authority under Part 3 of that Act.
20. A premises licence may also be required for the supply of alcohol by (or on behalf of) a club to (or to the order of) one of its members; the provision of a regulated entertainment or the provision of late night refreshment.

(b) The provisions governing a non-summary review of a premises licence

21. The 2003 Act contains provisions enabling a responsible body (which includes the relevant licensing authority itself and the chief officer of police for the area) or, indeed, any other person to apply for a review by that authority of a premises licence¹. The licensing authority, however, may reject any ground on which the application is made if it is satisfied that it is frivolous, vexatious or repetitious (unless it is made by a responsible authority) or if it is not relevant to one or more of the licensing objectives².
22. The licensing objectives are the prevention of crime and disorder; public safety; the prevention of public nuisance and the protection of children from harm³.
23. Having followed the prescribed procedure and having had regard to any relevant representations, the authority must take such of the steps mentioned in section 52(4) of the Act (if any) as it considers appropriate for the promotion of the licensing objectives⁴. These steps are:
 - “(a) to modify the conditions of the licence;
 - (b) to exclude a licensable activity from the scope of the licence;
 - (c) to remove the designated premises supervisor;
 - (d) to suspend the licence for a period not exceeding three months;
 - (e) to revoke the licence”.
24. The procedure prescribed for such a review involves a certain amount of unavoidable delay. The application for the review must be advertised for a period of not less than 28 consecutive days (starting on the day after the application was given to the relevant licensing authority) stating the period within which representations may be made to the authority⁵. The hearing of the review (of which not less than 10 working days

¹ See sections 13, 51 and 53 of the 2003 Act.

² See section 51(4) of the 2003 Act.

³ See section 4(2) of the 2003 Act.

⁴ See section 52(3) of the 2003 Act.

⁵ Regulations 38(2)(b) and 39 of the Licensing Act (2003) (Premises licences and club premises certificates) Regulations 2005.

notice must be given) must take place within 20 working days beginning with the day after the end of the period during which representations may be made⁶. Further, any determination on such a review does not have effect until the end of the period given for appealing against the decision to the magistrates' court and, if the decision is appealed, the appeal is disposed of⁷.

25. The provisions for review also contain no provision for interim measures to be taken in the public interest pending the determination of the review.

(c) The provisions governing a summary review

26. The Violent Crime Reduction Act 2006 introduced a procedure for summary review of one type of premises licence. Section 53A of the 2003 Act now provides that:

“(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.

(4) In this section—

‘senior member’, in relation to a police force, means a police officer who is a member of that force and of or above the rank of superintendent; and

‘serious crime’ has the same meaning as in the Regulation of Investigatory Powers Act 2000 (c. 23) (see section 81(2) and (3) of that Act).”

27. There is no definition of serious disorder for this purpose. Serious crime, as thus defined, is crime that satisfies the test either

- “(a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; [or]
- (b) that the conduct involves the use of violence results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.”

⁶ Regulations 5 and 6 of, and Schedule 1, to the Licensing (Hearings) Regulations 2005.

⁷ See sections 52(11) and 181 of the 2003 Act.

Any crime constituted by conduct that involves the use of violence is thus “serious crime” for the purpose of these provisions.

28. The application for a review of the premises licence under section 53A must be made by the chief officer of police in the form and contain the information set out in Schedule 8A to the Licensing Act 2003 (Premises licenses and club premises certificates) Regulations 2005⁸. The prescribed form contains a box for providing details of the association of the premises with serious crime, serious disorder or both. There is, however, no prescribed form for the certificate to be given by the senior member of the relevant police force.
29. Within 48 hours of receiving the application for a summary review, the licensing authority must give notice of the review to the licence holder and each responsible authority providing them with a copy of the application and certificate accompanying it⁹. Within the same period it must also consider whether it is necessary to take interim steps pending its determination of the review under section 53B¹⁰. Section 53B provides (*inter alia*) that:
- “(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.**
 - (4) For the purposes of subsection (3)(a) the conditions of a premises licence are modified if any of them is altered or omitted or any new condition is added.**
 - (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,**

⁸ See regulation 16A of the Licensing Act 2003 (Premises licenses and club premises certificates) Regulations 2005.

⁹ See regulation 36A of the Licensing Act 2003 (Premises licenses and club premises certificates) Regulations 2005.

¹⁰ See section 53A(2)(a) of the 2003 Act.

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 appropriate 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.”

30. It may be noted that it is initially for the licensing authority to consider whether it is necessary to take interim steps pending the determination of the review. It must do so with a view to promoting the licensing objectives¹¹. Subsequently it must decide after a hearing in the light of any representations received whether the interim steps are appropriate for the promotion of the licensing objectives¹².

31. The licensing authority must also advertise the application for a summary review for a period of no less than seven consecutive days (starting on the day after the application was received) stating that representations may be made in a period between the date of the first working day after the notice was published and the ninth subsequent working day¹³. Notice of the hearing to consider the application for review and any relevant representations has to be given no later than 5 working days before the day of the hearing.

32. Section 53C provides (*inter alia*) that:

“(2) The relevant licensing authority must—

- (a) hold a hearing to consider the application for the review and any relevant representations;

¹¹ See section 4(1) of the 2003 Act.

¹² See section 53B(8)(a) of the 2003 Act.

¹³ See regulations 38(2)(a), 39 and 39A of the Licensing Act 2003 (Premises licenses and club premises certificates) Regulations 2005.

- (b) take such steps mentioned in subsection (3) (if any) as it considers appropriate 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.”
33. The same rules apply to the hearing of the summary review itself as apply in a non-summary review, save that the licensing authority may consider representations which do not relate to the crime prevention objective (which it may not do normally when considering a notice by a chief officer of police in certain other cases)¹⁴. However, the authority may not exercise its powers to extend time and to adjourn the hearing if that would result in it failing to determine the review within 28 days of its receipt of the application and its decision on the summary review must be made at the conclusion of the hearing¹⁵. But, as in the case of a non-summary review, a decision on a summary review does not have effect until the end of the period given for appealing against the decision to the magistrates’ court, or if the decision is appealed against, the time the appeal is disposed of¹⁶.
34. It will be seen, therefore, that the main differences between a summary review and a non-summary review of a premises licence are (i) that a summary review must be completed within a much shorter timescale and (ii) that the licensing authority may impose with potentially immediate effect such interim steps as it considers necessary with a view to promoting the licensing objectives, and may maintain them where appropriate for that purpose, pending determination of the summary review which it cannot do in the case of other reviews.

THE HOME OFFICE’S NON-STATUTORY GUIDANCE

35. The Home Office issued non-statutory guidance in 2012, “Section 53A Licensing Act 2003 Summary Review Guidance”, on which Mr Phillips seeks to rely. It states (*inter alia*) that:

“2.4 In deciding whether to sign a certificate, the senior officer will want to consider the following (as applicable):

¹⁴ See regulations 2(4) and 19(b) of the Licensing Act 2003 (Hearings) Regulations 2005.

¹⁵ See regulations 11, 12, 13(c) and 26(1)(ab) of the Licensing Act 2003 (Hearings) Regulations 2005.

¹⁶ See section 53C(12) and 181 of the 2003 Act.

- The track record of the licensed premises concerned and whether the police have previously had cause to give advice about serious criminal or disorderly conduct (or the likelihood of such conduct) attributable to activities taking place on the premises – it is not expected that this power will be used as a first response to a problem.
- The nature of the likely crime and/or disorder – is the potential incident sufficiently serious to warrant using this power?
- Should an alternative power be deployed? Is the incident sufficiently serious to warrant use of the powers in sections 161 to 165 of the 2003 Act to close the premises? Or could the police trigger a standard licence review to address the problem? Alternatively, could expedited reviews be used in conjunction with other powers (for example, modifying licence conditions following the use of a closure power).
- What added value will use of the expedited process bring? How would any interim steps that the licensing authority might take effectively address the problem?

2.5 It is recommended that these points are addressed in the chief officer's application to the licensing authority. In particular, it is important to explain why other powers or actions are not considered to be appropriate. It is up to the police to decide whether to include this information in the certificate or in section 4 of the application for summary review. The police will also have an opportunity later to make representations in relation to the full review."

36. The guidance also indicates that an "intended use" of the power of summary review includes tackling the use of dangerous weapons and the violence they fuel. It also contains a sample certificate that contains a section headed "I am giving this certificate because I am of the opinion that other procedures under the Licensing Act are inappropriate in this case because" and a note providing examples of such reasons, namely "the degree of seriousness of the crime and/or disorder, the past history of compliance in relation to the premises concerned".

CONSIDERATION

37. As I have already explained, Mr Phillips contended, on behalf of the Claimant, that the mere occurrence of serious crime or serious disorder at the licensed premises is insufficient to justify a senior member of the relevant police force giving the certificate that must support any application for a summary review. Had that been Parliament's intention, it could have provided that a certificate could be given if serious crime or serious disorder had occurred on the licensed premises, something which would have been a simple matter of fact not requiring an expression of any opinion by a senior member of the police force. But it had not done so.
38. For the premises to be "associated with serious crime or serious disorder", so Mr Phillips submitted, there must be a pattern of such behaviour there that would lead a reasonable person to associate the premises with serious crime or serious disorder or both. He submitted that the basis for such an association may be found only in either (a) a series of serious crimes or serious disorders or (b) a single incident that provides evidence of such a pattern. That represented a modification to the position Mr Phillips had adopted in his skeleton argument. There he had accepted that a single crime could be so serious that it could lead to such an association.
39. In support of the Claimant's case Mr Phillips submitted that, given what he described as the "draconian" and "extra-judicial power" to impose interim steps given to a local authority with a "complete and unusual" absence of any right of appeal, it would be

expected that Parliament would have looked, not simply for evidence of a “one-off” incident before a summary review could be instigated and such steps imposed, but rather for an assurance from the police that it related to “a broader association of the premises” with serious crime or serious disorder. Any other approach, so he asserted, would be disproportionate and it would expose every alcohol-licensed premises, of which there are more than 170,000, unjustifiably to the risk of “summary and prolonged closure” should they “fall victim to a ‘one-off’ incident”.

40. Such are the “draconian” consequences of a summary review, so Mr Phillips submitted that the precondition (which has to be satisfied before it may be invoked) should be strictly construed and the licensing authority should satisfy itself that it has been met. Thus he further contended that, once an application for summary review has been made to the licensing authority, that authority has to review whether the premises are associated with serious disorder or serious crime and that it should not proceed with the summary review if it is not satisfied, or if it considers that the senior member of police who gave the certificate could not reasonably have been satisfied, that such an association exists. Initially he submitted (reflecting the grounds on which this claim was made) that the authority should form its own view on such information as was available to it. But eventually he submitted that the authority should merely determine whether the information available to the senior member of the police force who gave the certificate was such that that officer could reasonably have formed the opinion that the licensed premises were associated with serious crime or serious disorder or both.

(a) The general approach to be adopted to the construction of the relevant provisions

41. In my judgment a summary review is not a “draconian” power.
- i) A summary review involves the determination of the civil rights of the licensee. But the fact that it must be completed more quickly than a non-summary review, within 28 days of receipt of the application for it, does not mean that the procedure governing the review itself is unfair or that the provisions are incompatible with article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. They plainly are not.
 - ii) It is, of course, the case that, having received an application for a summary review, a licensing authority is required to consider, and it has the power to impose and maintain, “interim steps” pending the determination of that review and that no compensation is payable for any loss that anyone adversely affected by such interim steps may suffer in the event that less restrictive or no measures affecting that person are imposed when the summary review is determined (whether by the licensing authority itself or by a magistrates’ court on appeal). However, the legislation provides both procedural and substantive safeguards. (a) The decision whether any “interim steps” should be imposed does not lie with the police: it is vested in the licensing authority for the area. (b) Although that authority may act urgently without first hearing from others, it must hold a prompt hearing into any representations made in respect of them. (c) Moreover any “interim steps” may only be ordered by a relevant licensing authority when “necessary” with a view to promoting the licensing objectives and they may only be maintained if “appropriate” for those purposes. Thus “interim steps” may not be imposed as a penalty or sanction

(whether “draconian” or otherwise) for anything that may have occurred in connection with the licensed premises. They are measures to be imposed only for preventive purposes when required in the public interest.

iii) Further, although the interim steps and the outcome of the review may involve an interference with the peaceful enjoyment of a licensee’s possessions for the purpose of article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁷, the provisions governing them are plainly not incompatible with the licensee’s rights under that article: they enable a fair balance to be preserved, subject to appropriate safeguards (including judicial review), between the public interest in the proper regulation of licensed premises and the licensee’s interests. Indeed, anyone (such as the Claimant in this case) granted a premises licence after October 1st 2007 (when the provisions for summary review came into effect) has only obtained such a licence under a regime providing for such a review, including provision for the imposition of “interim steps” pending its determination.

42. In my judgment, therefore, the relevant provisions are not penal, much less “draconian”. They each fall to be construed so as to ascertain the intention of Parliament as expressed in the language it used, in the context in which the provision appears, having regard to the purpose for which it was enacted. The general context in which each appears is that of a scheme to enable a premises licence that authorises the sale of alcohol to be reviewed swiftly in the public interest when it appears that those premises are associated with serious crime or serious disorder or both and to enable interim steps to be imposed and maintained pending the determination of that review with a view to promoting the licensing objectives.

(b) When a certificate may be given and the validity of the certificate given in this case

43. When considering the proper construction of section 53A(1) of the 2003 Act, it is important in my judgment to distinguish two matters: (i) the certificate given by a senior member of the relevant police force and (ii) the decision by the chief officer of that police force to apply for a summary review of the premises licence.

44. The certificate, which the senior member of the relevant police force is required to give, is one stating that in his opinion the premises are associated with serious crime or serious disorder or both. That certificate does not have to state, nor does the section require that officer to have formed the view, that an application to the relevant licensing authority should be made under that section for a summary review of the premises licence. Whether such an application should be made involves the exercise of a discretion vested by that section instead in the chief officer of that police force. Whether that discretion should be exercised may depend, for example, on the nature of the association which the premises may have with serious crime or serious disorder; whether the chief officer of police considers that the licensing authority should be able to consider taking interim steps pending the determination of any review and his view of the need for, or desirability of, any review of the licence to be completed expeditiously. But the question whether to make such an application is different from whether the licensed premises are associated with serious crime or serious disorder or both.

¹⁷ See eg *Tre Traktorier v Sweden* (1989) 13 EHRR 309.

45. The different functions vested by Parliament in a senior member and the chief officer of the relevant police force respectively, however, are obfuscated in the non-statutory guidance issued by the Home Office. Somewhat confusingly the sample certificate provided in that guidance invites the senior member of the police force giving the certificate to state that he or she is giving it because he or she is of the opinion that other procedures under the 2003 Act are “inappropriate”, rather than providing the reasons why he or she holds the opinion that the licensed premises are associated with serious crime or serious disorder. Similarly paragraph [2.4] of that guidance invites the senior member to consider a number of matters in deciding whether or not to sign a certificate that are directed at whether or not an application for a summary review should be made (which is a matter for the chief officer of the relevant police force). Paragraph [2.5] recommends that these points are also addressed in the chief officer’s application for summary review, although the prescribed form for that only requires the chief officer to give details of the association of the premises with serious crime, serious disorder or both (the existence of which is a matter for the senior member of the force giving the certificate) rather than the reasons why, given any such association, the chief officer is making the application for summary review. But, in any event, there is no advice provided in the non-statutory guidance on what may constitute an association between licensed premises and serious crime or serious disorder. I have, therefore, derived no real assistance on that question from its contents.
46. For one thing to be “associated with” another requires a relationship to exist between them, but the type of relationship that may be relevant will depend on what those things are and the context in which that phrase appears. In my judgment, for licensed premises to be associated with serious crime or serious disorder (in the context of section 53A of the 2003 Act), there must be a connection or link between them that could be relevant to the regulation of such premises.
47. The mere fact serious crime or serious disorder occurs in, or close to, the licensed premises, therefore, does not necessarily mean in this context that such disorder or crime has any relevant connection or link with those premises. For example, disorder that has begun elsewhere and has nothing to do with premises, their management or customers might be continued in the road outside the licensed premises or might spill over into the premises’ car park. The fact that the disorder has come to the licensed premises may have nothing to do with them. In such a case the disorder would have no connection or link with the licensed premises other than its accidental geographical propinquity to them. That could not constitute a relevant association between the licensed premises and the disorder for the purpose of regulating such premises.
48. The nature of a relevant connection or link between the licensed premises and serious crime or serious disorder, however, may take various forms. It might involve a connection or link, for example, between the management of the premises or the activities of its customers or staff on the one hand and serious crime or serious disorder on the other. Given the inevitably wide and potentially unpredictable variety of circumstances in which serious crime or serious disorder may occur that may have some relevant connection or link to the licensed premises, Parliament has decided not to define or to limit the nature of the association with serious crime or serious disorder which the licensed premises must have. Parliament has decided instead to leave it to

the opinion of a senior member of the local police force to determine whether the premises are associated with such matters.

49. Mr Phillips does not contend that there is any legal rule that the opinion of the senior member of the relevant police force giving the certificate cannot be based on a single incident. In my judgment that concession was rightly made. There is nothing in section 53A(1) that supports such a contention. Moreover, if correct, that contention would require what constitutes a single incident to be defined. A series of serious crimes might be committed which might or might not be classified as forming part of a single incident. In this case, for example, more than one serious crime may have taken place: one inside and one outside the pub. That might be classified as involving two incidents or merely as one continuing incident. But such a classification would not of itself cast any light on whether the premises were associated with serious crime.
50. Mr Phillips did contend, however, that, if the existence of an association was based on a single incident, that incident had to provide evidence of a pattern of behaviour that would lead a reasonable person to associate the premises with serious crime or serious disorder or both. The person in whose opinion the association must exist is the senior member of the police force who gives the certificate. No doubt, if he or she gives a certificate, that officer's opinion should be one that a reasonable person in his position could have formed. But in my judgment there is no legal requirement that that officer must be satisfied the licensed premises have been associated with any "pattern" of serious crime or serious disorder.
51. There is no reason why serious disorder may not be associated with licensed premises even if that disorder does not indicate that the licensed premises have been associated with any serious disorder before. Licensed premises may be associated with serious disorder, for example, if such disorder by its drunken customers occurs on the premises when it should not have done had the premises been managed properly. Such an association of the premises with the disorder is one plainly relevant to the regulation of such premises.
52. There would appear to be no good reason why a summary review can be invoked if the licensed premises are associated with serious disorder on one occasion but not if they are associated with a single serious crime. True it is that the relevant provision does not refer to the premises being associated "with a serious crime". But in my judgment little weight can be placed on the absence of the indefinite article. Licensed premises may be associated with serious crime if, for example, the licensee, a member of staff or customer engages in such conduct on the premises. Such an association is one relevant to the regulation of such premises. Moreover to require that the licensed premises must be associated with more than one serious crime, or that it must be possible to infer the likely occurrence of other serious crimes previously from one that has been detected, before a certificate can be given would frustrate the purpose for which summary review exists. The purpose of a summary review is to enable swift action to be taken with a view to promoting the licensing objectives. The need for such action may be revealed by the association that the licensed premises have with one serious crime without more, for example, if a licensee or designated premises supervisor gets drunk and violently assaults a customer.

53. In my judgment, therefore, there is no legal requirement that that officer must be satisfied the licensed premises have been associated with any "pattern" of serious crime or serious disorder. There is no requirement that the premises are persistently associated, or that they have been repeatedly associated or associated more than once, with serious crime or serious disorder.
54. In his skeleton argument Mr Phillips had submitted that, in the case of a single incident involving serious crime, that crime would have to be so serious that it could lead to such an association. In that respect he submitted that the association could be created by the use of firearms or the apprehension of a number of individuals dealing in Class A drugs. I do not accept, however, that licensed premises can only be associated with a crime that is a serious crime if that crime is in some respect more serious than is required for it to be a serious crime. In my judgment it is sufficient that it is one that is classified as serious by Parliament for the purpose of this provision.
55. The certificate stating that in the opinion of the senior member of the relevant police force licensed premises are associated with serious crime or serious disorder or both can no doubt be made the subject of a claim for judicial review at least in principle if, for example, that opinion is one that no reasonable senior police officer could hold in the circumstances or it could be shown that the officer was biased.
56. In considering whether any certificate was one that no reasonable person could have given, however, it must be borne in mind that the circumstances may be such that the chief officer of police considers that urgent action is required and the senior member of the force may have only incomplete information about what may have occurred when asked to give a certificate.
57. Moreover, in my judgment no stringent standard of review of the certificate is called for. The certificate of itself merely permits an application for summary review to be made if the chief officer of the police force so decides. If such an application is made, the decisions whether or not any interim steps are necessary with a view to promoting the licensing objectives and whether they should be maintained are vested in the relevant licensing authority. Such decisions are to be taken, subject to appropriate procedural safeguards, on the basis of all the information then available to that authority. Further the determination of the review will be made by the licensing authority and may be made the subject of an appeal to the magistrates' court. While the requirement of a certificate is significant, something underlined by the requirement that it must be given by a senior member of the relevant police force, all the circumstances, including any association that the licensed premises may have with serious crime and disorder, can be examined fairly on the merits when the application for summary review is under consideration.
58. In my judgment it is plain in any event, however, that, in this case, Superintendent Nash was entitled to give the certificate that he did under section 53A(1)(b) stating that in his opinion the premises were associated with serious crime. Such a crime includes one that involves the use of violence. It appeared that the man seriously (and potentially fatally) injured on July 27th 2014 had been kicked in the buttocks and in the area of his head by the Claimant's husband who was managing the pub at the time and that he had been punched on the head by a customer when being forcibly removed from premises by customers in it. The incident involved at least two

apparent assaults and, in Superintendent Nash's opinion, there was "clear evidence of improper management" associated with those assaults and their aftermath.

59. I have already summarised in paragraph [13] above what was stated in the application for the summary review in this case about the circumstances as they appeared to the police. The conclusion was that there had been a catastrophic failure in the management of the premises and that suspension of the licence was required to prevent further such incidents. In those circumstances it could not have been suggested that the absence of any previous history of serious crime or disorder at the licensed premises made the decision to invoke the summary procedure irrational. Indeed the Claimant has not impugned the decision of the Chief Officer of Metropolitan Police to apply for a summary review of her premises licence. But it would be perverse if circumstances (such as those in this case) in which an application for a summary review can be justified are not ones in which a certificate can be given that would enable such an application to be made.

(c) The functions of the licensing authority with respect to any certificate given

60. Mr Phillips further contended that, once an application for summary review has been made to the licensing authority, that authority has to review the basis on which the senior member of the relevant police force formed his or her opinion about the association which the licensed premises have with serious crime or serious disorder and that the authority should not proceed with the summary review if it is not satisfied that such an association exists. Initially he submitted (reflecting the grounds on which this claim was made) that the authority should form its own view on such information as is available to it. But, eventually, he submitted that the authority should merely determine whether the information available to the officer when giving the certificate was such that that officer could reasonably have formed the opinion that the licensed premises were associated with serious crime, serious disorder or both.
61. When considering interim steps and when determining the summary review itself, the licensing authority will need to have regard to the certificate that accompanied the application as well as any representations made by the chief officer of police and by the licence holder or others. But in doing so, it is not considering an appeal against the certificate. Indeed the senior member of the police force giving the certificate is not a party to the summary review. The purpose for which Parliament intended the licensing authority to have regard to the certificate (together with other matters) when considering interim steps is to assist it in determining whether such steps are necessary, and whether subsequently their maintenance is appropriate, for the promotion of the licensing objectives, as section 53B(8) and (9)(a) of the 2003 Act (which I have set out in paragraph [29] above) make plain.
62. In my judgment the licensing authority is obliged to conduct the summary review even if it considers that the information available to the officer when he gave the certificate did not establish that the premises were associated with serious crime or serious disorder.
63. The fact (if it be the case) that the licensing authority does not itself consider that any reasons provided for giving the certificate establish that there is an association between the licensed premises and serious crime or serious disorder is not of itself necessarily decisive for any decision about interim steps or for the determination of

the summary review itself. The licensing authority may consider interim steps are necessary or appropriate for the prevention of crime and disorder (which is one of the licensing objectives) given further information provided, or representations made, by the chief officer of police or, when determining the summary review, by others. Moreover, even if the senior officer of police or the chief officer of police subsequently change their opinions about the association of the licensed premises with serious crime or serious disorder or about the desirability of holding a summary review, the licensing authority remains under a statutory duty to determine that review within 28 days of the receipt of the application. When doing so, as explained above, the authority may consider representations that do not relate to the crime prevention objective (as well, of course as those which do) and, as section 53C(2)(b) of the 2003 Act states, the authority must then take any steps as it considers appropriate for the promotion of the licensing objectives, not merely the crime prevention objective.

64. Mr Phillips's final position was in effect that the licensing authority should merely review the certificate given by the senior officer of police on the same basis as this court would on a claim for judicial review and not proceed with the summary review if it considered that the certificate given was invalid.
65. This contention sits very uneasily with the acceptance in the Claimant's grounds which Mr Phillips settled and in his own skeleton argument that, in the light of the decision in *R (Byrne) v Commissioner of Police of the Metropolis* [2010] EWHC 3656 (Admin), challenges to validity of the certificate may only be made by way of a claim for judicial review.
66. The issue in *Byrne* was whether the magistrates' court (or the Crown Court on an appeal from that court) was entitled, when considering an application for a closure order under the Anti-Social Behaviour Act 2003, to consider whether a closure notice served by a constable (that was a precondition for, and triggered, the application for the closure order) had not been lawfully authorised by a police superintendent. The provisions in question were concerned with premises whose use was associated with significant and persistent disorder or persistent serious nuisance to members of the public. Any person other than the owner or an individual who habitually resided in the premises was prohibited from entering them by the closure notice for a limited period whilst an application for a closure order also made by a constable (which had to be made once the closure notice was served) was being considered. The application for the closure order had to be heard by the magistrates' court within 48 hours after the closure notice was served. The hearing could only be adjourned on identified grounds for no more than 14 days. Any closure order, which the court had a discretion to make only if satisfied *inter alia* that it was necessary to prevent the occurrence of such disorder or nuisance, would continue the prohibition for a specified period.
67. Moses LJ found that it was not open to the magistrates' court (and by extension the Crown Court on appeal) to consider whether the authorisation of the closure notice was unlawful on traditional public law grounds (in that case on the ground that the police superintendent had failed to have regard to Home Office guidance). Moses LJ considered that the court was entitled not to "become involved in a prior judicial review analysis" since the claimant was not resisting a criminal charge but was simply challenging the legality of that without which an application to the court for a closure order could not have been made, something which he could have done on a claim for judicial review: see *ibid* at [17]-[19]. A further ground on which Moses LJ reached his

decision was that, in his view, following the analysis in *R v Wicks* [1998] AC 92, the statutory scheme was such that, for the court to have jurisdiction, it only required an act by a relevant officer (the authorisation of the closure notice) which appeared formally valid and had not been quashed on judicial review, since the effect of that act was merely to trigger the application to another body (the court) for it to exercise its discretion whether to make the closure order: see *ibid* at [20]-[21].

68. In my judgment the relevant question, in accordance with the principles stated by Lord Hoffmann in *R v Wicks supra* at p119, is whether the “certificate” (that must accompany the application under section 53A(1) of the 2003 Act) must be one that is not liable to be quashed or whether it is sufficient to give the licensing authority jurisdiction that it is one that has not in fact been quashed. The answer to that question is not necessarily provided by the decision in *Byrne* (which was concerned with the construction of the Anti-Social Behaviour Act 2003) since it depends on the construction of the 2003 Act.
69. There is, of course, a strong presumption that individuals affected by legal measures promulgated by executive public bodies should have a fair opportunity to challenge those measures and to vindicate their rights in court proceedings: eg per Lord Irvine LC *Boddington v British Transport Police* [1999] 2 AC 143 at p161. But that presumption is not directly engaged by the certificate given for the purpose of section 53A(1) of the 2003 Act. That certificate is one element within a scheme designed (as in *Byrne*) to permit preventive action to be taken swiftly in the public interest. The certificate itself creates no offence or obligation. Of itself it has no immediate effect on the rights of the licence holder or others. The certificate is merely something that has to be provided to enable an application to be made by the chief officer of police to another body. That application (unlike the closure notice in *Byrne*) itself imposes no restriction on the use of the licensed premises. It is that other body, in this case the licensing authority, which has the discretion to determine what steps may be necessary for the promotion of the licensing objectives that may affect the rights of others.
70. In my judgment Parliament intended that the licensing authority should be entitled to treat an application for a summary review made by the chief officer of police as valid if it is accompanied by a certificate that apparently meets the requirements of section 53A(1) and has not been quashed. It is not obliged to consider whether or not it is liable to be quashed.
71. The statutory provisions describing the substantive functions of the licensing authority on receipt of the application for a summary review are focused solely on what may be necessary or appropriate for the promotion of the licensing objectives. There are other features of the statutory scheme that also indicate that Parliament did not intend the licensing authority to be diverted from that task into reviewing the legality of any ostensibly valid certificate if it is impugned. The first is that what Parliament has required the senior member of the police force to provide (which must accompany the application made by the chief officer of police) is simply a certificate stating his opinion. That is a document whose contents can be checked to ascertain their compliance with the statutory requirement merely by reading it. Secondly, had Parliament intended the licensing authority to review whether the senior member of the police force could have rationally formed the opinion which that officer has certified on the basis of the information available to him or her when the certificate

was given, it might have been expected to make provision (which it did not do) (a) requiring that officer to state the reasons for his or her opinion in the certificate and (b) enabling that officer to be heard in response to any attempt to impugn it (just as that officer would be entitled to be made a defendant and to be heard on any claim for judicial review of his certificate). Thirdly the fact that the application accompanied by the certificate is made under the 2003 Act to the licensing authority, rather than to the magistrates' court as in *Byrne*, suggests that it is even less likely that Parliament intended the licensing authority should itself conduct a judicial review on public law grounds of any certificate accompanying the application to it for a summary review.

72. In my judgment, therefore, the licensing authority was not obliged to consider whether or not Superintendent Nash was entitled to give the certificate that he did on the basis of the information then available to him.

CONCLUSION

73. A summary review of a premises licence that authorises the sale of alcohol under the 2003 Act is not a penal sanction nor are its consequences "draconian". It is a process designed to enable such a licence to be reviewed swiftly, and interim steps taken pending the determination of that review, by the relevant licensing authority with a view to promoting the licensing objectives. The provisions governing a summary review are compatible with the licensee's rights under article 6 of, and article 1 of the First Protocol to, the Convention for the Protection of Human Rights and Fundamental Freedoms.
74. A summary review may be invoked by an application made by the chief officer of the relevant police force that has to be accompanied by a certificate by a senior member of that force stating that in his or her opinion the licensed premises are associated with serious crime or serious disorder or both. That requires there to be a connection or link between the premises and serious crime or serious disorder that could be relevant to the regulation of such premises under the 2003 Act. Parliament has decided not to define or to limit the nature of any such association but has decided instead, given that the connection or link may take various forms and occur in potentially unpredictable circumstances, to leave it to the opinion of a senior member of the relevant police force whether such an association exists. There is no requirement that the licensed premises must be persistently associated, or that they have been repeatedly associated or 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.
75. Parliament intended that the licensing authority should be entitled to treat an application for a summary review made by the chief officer of police as valid if it is accompanied by a certificate that apparently meets the requirements of section 53A(1) and has not been quashed. The licensing authority is not obliged to consider whether or not it is liable to be quashed.
76. On a claim for judicial review of such a certificate, no particularly stringent standard of review is called for, given that the certificate of itself has no immediate and direct effect on others and that all the circumstances, including any association that the licensed premises may have with serious crime and disorder, can be examined fairly on the merits when the application for summary review is under consideration.

77. In any event, however, in this case Superintendent Nash 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.
78. Accordingly this claim for judicial review must be dismissed.