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Case No. CO/3568/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL
27 July 2016

B e f o r e :

MR JUSTICE OUSELEY

Between:
THE QUEEN ON THE APPLICATION OF WOODWARD **Claimant**
v
THURROCK BOROUGH COUNCIL **Defendant**

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Mr Stuart Jessop (instructed by Direct Access) appeared on behalf of the Claimant
Mr Josef Cannon (instructed by Local Authority Solicitors) appeared on behalf of the Defendant

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HTML VERSION OF JUDGMENT (APPROVED)

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1. **MR JUSTICE OUSELEY**: This is the rolled-up hearing ordered by Holman J, sitting as the immediate judge, of an application for permission to apply for judicial review of a decision made by the licensing subcommittee as licensing authority of Thurrock Borough Council on 22 June 2016. A time-limited premises licence had been applied for on 19 April for a two-day music festival on 13 and 14 August 2006 at Aveley in the area of Thurrock Borough Council. A licence had been granted for this event some months before, but the event manager pulled out. The claimant postponed the event from April and applied then for a further premises licence.

2. There were a number of differences between what was proposed from what had been granted. The application form was accompanied by the operating schedule, which section 17 of the Licensing Act required, and was in the form prescribed by regulations to that end. The properly formed application triggered the 28-day statutory consultation period, during which representations from those interested could be made. Such representations

were made by the Essex Police and the public protection officers of Thurrock Borough Council as one of the responsible authorities. There were also residents' objections.

3. As a supporting document, the claimant submitted a drafted Event Management Plan or "EMP" on 13 May 2016. As is commonplace, discussions were held with a safety advisory group ("SAG"), which includes police and the local authority, to discuss and potentially resolve issues before the hearing before the licensing subcommittee, a hearing which is required wherever relevant representations have been received. At the SAG meeting of 20 May 2016, concerns were raised which led to a number of documents being submitted to the council on 25 May. These included a second version of the EMP.

4. On 7 June the licensing subcommittee considered the application and representations, but both the police and the council as Responsible Authorities had continuing concerns about the information and its deficiencies. The matter was adjourned by agreement to 22 June 2016. A third version of the Event Management Plan was sent to Police Inspector Lee Argent on 14 June 2016 and also to Mr Paul Adams of the Borough Council.

5. On 17 June, the Safety Advisory Group met. The claimant was represented by Mr May. The upshot of the discussion was that a number of concerns remained outstanding and were raised and discussed at the meeting. Thereafter, Mr May pressed Mr Adams to provide a list of the outstanding concerns so that he could address them. On 21 June, Mr Adams sent the list of concerns after being pressed. That was a Tuesday. Later that day, Mr May responded with some short comments in relation to each concern. The claimant presented to Mr Adams at least and, potentially to the police, a further document entitled "A Method Statement", which the police did not read before the meeting on 22 June and nor did Mr Adams.

6. At the meeting on 22 June, at which Mr Jessop who appears here for the claimant also appeared, as is not uncommon, the claimant at the subcommittee presented their case.

7. The minutes of the meeting show that the licensing officer, who is a separate officer from Mr Adams who was engaged in considering the merits of the application and was instead an officer concerned with the procedural side of the hearing, introduced the meeting. Ms Cox says in her witness statement that she told the meeting that version three of the Event Management Plan and supporting documents had been supplied and were available at the hearing for anyone who wanted to read them.

8. Inspector Argent, according to the minutes, presented his case to the committee, highlighting first concerns around the main access route, the red gate, into the venue and the number of vehicles, private vehicles, production vehicles, shuttle buses and emergency services which all have to use an access sufficiently narrow that it could become quickly blocked and congested leading to delays for emergency vehicles. He expressed concern over the use of stewards, albeit apparently specialist stewards, but not the specialist police resources, which would be police officers who had the right, which stewards lacked, to control traffic and pedestrian movements on the highways nearby. The venue was very close to the A13 and the A136, both of which have a speed limit of 40 miles per hour or above. There was concern about festival goers, either by number or by inebriation, getting themselves into difficulties with traffic on those roads.

9. The question of why the police were not being used was raised by a councillor who was told by Mr Jessop that the management team had chosen to use this company specialising in event traffic planning. There was an interchange, via questions, between Mr Jessop and Mr Argent on a number of topics as recorded in the minutes, which seemed principally to relate to why the police had not done things more quickly than they had in relation to raising issues so that they could be answered. Mr Adams then gave evidence or made representations and there were a number of questions raised by him. The minutes do not record any intervention by the chairman of the committee preventing Mr Jessop asking any questions of Mr Adams, in particular questions in which Mr Jessop sought to ask Mr Adams as to whether the concerns that Mr Adams had expressed in his email of 21 June could not be dealt with by way of conditions on the licence.

10. There were then questions asked by the police of, as I understand it, Mr May presenting his representations. Mr Adams says that he was questioned extensively by the applicant's representative, responding fully to all the questions asked of him. There was then a further debate with the committee members asking questions of the

parties, and residents presented their case. It appears that the last event was the presentation by Mr Jessop. Questions were then asked by members of the committee and answered, including questions about the size of buses and the arrival on the scene of a new coach contractor.

11. Finally, the committee chairman asked whether everybody had said what they wanted to say. Nobody said otherwise. The committee members then retired to consider their decision. The written decision was signed on 7 July refusing the application. The decision letter summarises the events at the meeting. They heard from the police authority. The questions raised with the police authority are referred to. The police noted that the special events management staff had no authority to control traffic on the highways. There were then questions of the police. The licensing authority then gave evidence supporting what the police had said.

12. Mr Jessop's questioning of the licensing authority was then dealt with. The authority was asked why the need for further detail had not been made clear. There then follows this in the decision reasons:

> "The licensing authority was asked whether the concerns could be addressed by conditions on the licence. In reply, this was a matter for subcommittee."

13. The representations of Mr Jessop were then summarised, including that there was sufficient time still to answer concerns. The most comprehensive management plan the committee had ever seen had been provided. The claimant was willing to accept any and all reasonable conditions to the licence, because of the amount already invested. The committee then recalled the questions which they asked in relation to traffic, parking and routes planned for the coaches.

14. After the committee retired to consider its decision, it came back with these as its essential reasons. The meeting two weeks before had been adjourned to allow the applicant a further opportunity to repair what the committee had considered to be gaps in the EMP, predominantly relating to the traffic management plan and the lack of control over members of the public leaving the site, mindful of the position of the venue between two fast roads. The event management plan had very similar gaps and the committee was not satisfied "that any real progress had been made in remedying those detects" within the EMP.

15. The committee noted that the applicant had confirmed he would use police support, which the police had indicated might be possible, but there was no assurance of that. The committee also considered there was insufficient planning between shuttle buses, coaches and the involvement of C2C to ensure that the site could be safely emptied at the conclusion of the event. On that basis, the application could not be granted.

16. It then turned to conditions recognising that it would try to grant applications where it could and the applicant had been prepared to accept stringent proportionate conditions:

> "The committee felt, however, that there was no information before it that the conditions it might impose could be met. There was insufficient information as to the whether C2C would work in conjunction with England Coaches and there is no assurance that police will be able to provide the officer assistance that it felt was required to meet the public safety objective."

17. It referred to the cancellation of a previous event, but concluded that without that information and those assurances, the most appropriate course was to refuse the application:

> "Mindful that the applicant could return with a fresh application that met the concerns raised (if of course time permitted)."

18. It finished by reminding the parties that they had a right to appeal to the Magistrates' Court.

19. In relation to the judicial review proceedings, the first point I need to deal with is the question of the appropriateness of judicial review in the light of the remedy provided under section 181 of the Licensing Act 2003 for an appeal to the Magistrates' Court, which enables the Magistrates' Court to reach a decision on the merits of the application. I accept the general principle referred to in a number of cases, but I can take by way of

example from a different context R (on the application of Willford) v Financial Services Authority [2013] EWCA 6677, but there are many others in the same vein, which effectively makes the point that where there is any statutory remedy, it is the statutory remedy that should be pursued, unless there are specific reasons why, exceptionally, judicial review is appropriate.

20. In this particular case, Mr Jessop made what Mr Cannon on behalf of the licensing authority described as a polite inquiry of the local magistrates as to whether they would be in a position to list an appeal hearing before the intended festival date in August, to which, not entirely surprisingly perhaps, the answer was, no, they could not. On that basis, it was said that the alternative remedy effectively was not available and, hence, judicial review was the only way in which they could challenge the decision. As Holman J in ordering the rolled-up hearing remarked, it would have been interesting to see what a judicial review at the Magistrates' Court decision might have produced.

21. It is of course the case that the existence of a right of appeal does not mean that no possible judicial review can arise. It is clear that this is a case which has to be put on the basis of an error of law and is so confined, but that is nonetheless something which, given the nature of the errors of law, would have been capable of remedy before the Magistrates' Court, because the errors are related to what documents were taken into account, had been properly considered and what questions were or were not permitted. So, there is no doubt that this is not a case where the Magistrates' Court were incapable of providing a perfectly adequate remedy.

22. It is quite inappropriate for the want of time, as very briefly asserted by a Magistrates' Court, to impose upon the High Court the burden of dealing with issues which statute has said are essentially for magistrates. I agree with Mr Cannon that the enquiry made did not carry with it the force, vigour and follow-up required to make a Magistrates' Court aware of its primary function in relation to these appeals, suggesting as it did that the company was likely to go by way of judicial review if no hearing could be arranged. So, the magistrates were presented with no incentive to get on.

23. It may have been the case that with the best will in the world and pulling out all the stops and altering their listings, the magistrates still could not have coped, but the point is properly made by Mr Cannon that the reason time was so short was because the claimant had not allowed sufficient time in his application for the relevant processes to be completed, including the problem created by inadequate provision right from the outset of information necessary for a quick resolution. They had been advised by Mr Adams that six months was the minimum needed between event and application. They allowed four. Preferably, 12 months should have been allowed.

24. However, as I have heard argument and the matter is before me as a rolled-up hearing, it would be wrong now to refuse to consider the remedy which Mr Jessop seeks, but I say what I have said in order to make it clear that those who embark upon a process which includes by statute an appeal to the Magistrates' Court must allow for sufficient time for that process to be completed before the event rather than imposing themselves upon the High Court, which does after all have a number of other cases of considerable importance to deal with other than those which properly belong in the Magistrates' Court.

25. It was suggested by way of an order of departure from or addition to the grounds that the Event Management Plan itself submitted on 14 June was part of the operating schedule and for that reason alone was required to be read by the committee, which had not read it. This is something of a misconception. It could not be part of the operating schedule, because it was not in the prescribed form and did not accompany the application. Alternatively, if Mr Jessop's submission were right that it was indeed such an animal, his case was bound to fail, because the matter went to the committee before the committee was even entitled to begin to consider the matter, the statutory consultation period not having finished.

26. Mr Jessop raised a number of grounds, three of which relate in particular to the role of the Event Management Plan. He puts his point in a variety of ways to cover different aspects, but they start from the premise that there was an obligation on the committee to read the Event Management Plan, because it was such a crucial document. I reject such a duty. There was no duty at all on them to read a 300-page document dealing with a large number

of matters, many of which were not at issue at all, because the control of the crowd inside the site and the way it would be treated inside the site was not really at issue at all.

27. The issues were much more confined ones. The way in which a hearing before a licensing committee is structured is that it is only required where there are representations and the hearing is about the representations which have been made. It is quite different in that respect from, for example, a planning committee which has to consider all material considerations and has to do so whether they are raised by representations or not. It would be a complete waste of time for them to have to read a document as opposed to focussing on what actually was an issue raised by the representations and getting on with the resolution of those points. All that the committee had to do was to understand enough to be able to reach a decision on the issues.

28. Accordingly, the part of Mr Jessop's first ground that the committee had to read the document is wrong. The committee only needed to consider it insofar as it was necessary for it to do so for the purpose of resolving any issue that arose. It may not have been necessary for it to do so at all.

29. It is then suggested that part of the problem was that the police had not read the Event Management Report, although it is perfectly clear that Mr Adams had read the Event Management Plan version three, but it is, with respect to Mr Jessop, quite wrong to say that the police had not read it.

30. The evidence from the police officer was that he had received version three on the 14th and, although he could not remember exactly when he viewed it, he had done so before the SAG meeting on 17 June 2006. It ought to have been evident, if that were wrong, to Mr May at that meeting that the police officer was talking about something which had been superseded. He continued saying that he did not recall ever stating at the hearing that the police had not read the EMP. It is quite evident that the passage in the decision letter which gave rise to this question has been misunderstood. The document which the police accepted they had not considered was the method statement submitted on 20 June.

31. The position further is, of course, that Mr Jessop was in a position to point out that the statements made by the police at the hearing and the concerns raised by Mr Adams were all nothing to the point, because they had been superseded by the content of the third version of the EMP, any traffic management plan and any method statement. That was all open to Mr Jessop to explain to the committee and point out that the objections had been overtaken by events, if that has been the case. The police made very clear the full extent of their objections and Mr Jessop was well in a position to explain what the position was.

32. The second way the matter is put is that the subcommittee failed to consider a relevant factor, but the principal point here is the police acceptance that they had not considered the Event Management Plan. That, as I have said, is a misunderstanding as to what was actually said. They had not considered the method statement. Mr May's evidence misunderstands what the evidence was about. It was those matters in particular, namely, the consideration given to the Event Management Plan that had troubled Holman J, but on analysis, in the light of the documentation now received from the defendant, there was no need for his concern.

33. There is a suggestion that the reasons given by the subcommittee are inadequate, because it implies that they had read the revised EMP when in fact they had not done so. What the decision said was:

> "The plan before them today had very similar gaps and the committee was not satisfied that any real progress had been made in remedying those detects within the Event Management Plan."

34. But they had heard the debate about it. They knew from what they were told what the main problems were and they had no answer provided to them from the Event Management Plan showing that those problems had been solved. Those were the problems with the use of non-police stewards for highways, the coaches, the adequacy and certainty of their number and the risk of blockage of the red gate entry and access creating problems for the emergency services, should anything go wrong in the festival and require attendance for dealing with quite a sizeable crowd.

35. The final point, although not unrelated to the EMP, has something of a different flavour. It is to the effect that if

Mr Jessop had known the subcommittee had not read the plan, he would have conducted his representations completely differently. As to its first part, I do not accept that. It was open to Mr Jessop to check what had been read, but, more importantly, it was open to him to use the Plan to support his contentions that the issues had been resolved or could be resolved by conditions. In reality, the gravamen of this point is the assertion that he was prevented from asking questions of Mr Adams about the email sent to Mr Adams, in which there were very brief and not entirely informative answers to concerns expressed about the Event Management Plan. As I have said, there is nothing in the minutes which suggests that he was prevented from asking questions. Indeed, the decision letter itself, in the passage that I have already quoted, recalls the licensing authority was asked whether the concerns could be addressed by conditions and the reply was that that was a matter for the subcommittee.

36. Mr Jessop has entirely professionally done his level best to avoid giving evidence as to what happened and I shall respect that. Mr May gives evidence in these brief terms. After saying that Mr Jessop asked Mr Evans to respond to the email of 21 June from Mr May, Mr Adams replied he did not have time to consider them:

> "It is my recollection that Mr Jessop was then prevented by the committee from asking further questions about this and, in particular, asking questions about whether these outstanding concerns expressed by Mr Adams in those emails could be made subject to conditions."

37. I am not concerned here with broader issues of whether the committee was exercising the powers which it has under the Licensing Act 2003 (Hearings) Regulations statutory instrument number 44 2005 regulations 23, which says that cross-examination is not permitted unless it is expressly allowed, or under regulation 16, which says that parties may be allowed to question each other with the permission of the authority. It is clear that questioning inter partes was permitted at this hearing. It may be that the answer given, according to Mr May, that he had not had time to consider documents persuaded the subcommittee, if their minutes and decision letter are wrong, that there was no point in asking questions of somebody who had not had time to consider the document about which he was being questioned. That would be a perfectly proper exercise by the committee of their discretion as to how to run a hearing.

38. It may be that the answer is as given by the committee; namely, that this was a matter for the subcommittee to consider, but even if Mr Jessop were right that the committee had stopped him asking Mr Adams about the conditions, there is nothing unfair about that, given the limited role of questions generally. This is not a case in which an advocate is entitled to press the questions to the extent he judges appropriate in his client's interests.

39. This was a case in which Mr Jessop was entitled to make the point to the subcommittee that the issues raised were now covered either by the answers in the email or by the method statement or by such other document as he chose to refer to, which would at the same time have enabled him to repeat the point, if he made it, that the police and council officers were not up to speed with what was being proposed. He was in a position to make those points to the committee and invite them to impose conditions. He either did so, in which case there is no unfairness, or he did not, in which case there is no unfairness. Fairness did not require that he be permitted to press questions.

40. Mr Jessop responds that of course there is advantage in having an answer from the officer, because then there is information. One of the things that concerned the committee was a lack of information, but the information that mattered was, if it existed at all, in the documents which Mr Jessop was in a position to deploy. He deployed it, as he said, in a generic fashion. The submission that there was unfairness is, in my submission, quite wrong. In any event, as I have said, he was going to get no joy worth anything of substance from a witness who had not read and studied the documents which the questions were based on.

41. For those reasons, I have concluded that this is not a case in which I am prepared to grant permission. If all the material had been before the judge on paper, permission would have been refused. Having examined the material and heard the argument, I am satisfied that this case is in reality unarguable. Accordingly, I refuse permission.

42. MR CANNON: My Lord, I am grateful. The local authority applies for its costs. I apprehend that my Lord does not have a costs schedule, given that my Lord does not have the most recent version of the bundle, which is

where it appears, but I can hand up a copy. I know my learned friend has a copy, because he included it in the bundle that he kindly served on me.

43. MR JUSTICE OUSELEY: How much are you asking for?

44. MR CANNON: My Lord, that is the only copy I have, but from memory it is £4,100 and something.

45. MR JUSTICE OUSELEY: £4,782 grand total.

46. MR CANNON: That sounds right.

47. MR JUSTICE OUSELEY: Mr Jessop.

48. MR JESSOP: I have no submissions as to the quantum.

49. MR JUSTICE OUSELEY: £4,782. You very much.