

SITTING NORTH WEST WILTSHIRE MAGISTRATES COURT ON 6/12/11

This is an appeal by Mr K Olmez against the decision of Wiltshire Council as licensing authority taken on 18th July 2011 to amend the premises licence held by Mr Olmez in respect of premises known as Favourite Chicken and Ribs 3 Market Street Trowbridge ('The premises')

The decision to amend the premises licence for Favourite Chicken and Ribs was made by the Council's Licensing Sub-Committee following a review of the licence requested by Wiltshire Police.

The provision of late night refreshment is defined in Schedule 2 of the Act as the supply of hot drink or hot food to the public between the hours of 11.00p.m and 5.00a.m, on or from premises whether for consumption on or off the premises . Therefore any hot food take-aways which wish to operate after 11.00 p.m. need to hold a valid Premises Licence issued by the Council.

The Council is entitled to place conditions on any Premises Licence that it issues, where it considers it necessary to do so, in order to promote the licensing objectives. The licensing objectives are set out in section 4 of the act and are

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In determining this appeal we are bound to have regard to those matters in which licensing authorities are directed at first instance, namely;

To proceed with a view to promoting the licensing objectives

Having regard to the authority's licensing statement and

To have regard for the guidance issued by the Secretary of State under Section 182 (S.4 (3) (6))

Mr Olmez the appellant bears the responsibility to show that the licensing authority should not have exercised its discretion in the way that it did and that its decision should be reversed.

This appeal is a re-hearing denovo. The powers available to the court on an appeal are set out in Section 181 LA 2003. These are to;

- (a) Dismiss the appeal
- (b) Substitute for the decision appealed against any other decision which could have been made by the licensing authority, in the case of an appeal against a review

decision where the only licensable activity is the provision of late-night refreshment these are

- To modify the conditions of the licence
 - To suspend the licence for a period not exceeding three months
 - To revoke the licence
- (c) Remit the case to the licensing authority to dispose of it in accordance with the direction of the court. This option would generally only be used if the Court felt that there had been some procedural defects in the way that the Licensing Authority reached its decision.

Evidence called may or may not throw a very different light on matters. We are obliged to take into account the evidence before us today and it is not open to us to substitute our own views for that evidence.

At this appeal hearing we have been provided with, read and been referred to the Appellant's Mr Olmez bundle of statements and the Respondent Wiltshire Council's bundle of statements, supporting documents, Secretary of State's guidance under S182 Licensing Act 2003 and the Wiltshire Council Statement of Licensing Policy, together with the Respondent's case summary and submissions. Case law has been provided and has been taken into account.

We have heard evidence from

Johanna Quartley

Jacqueline Gallimore

On behalf of the Respondent

And

Kenan Olmez

Alastair Erdozain

On behalf of the Appellant

We rely on the facts provided by the Respondent and not disputed by the Appellant at paragraphs 14, 15, 16, 17 & 18

As shown below

14 The licensing background to the Favourite Chicken premises is set out in the statement of the Council's Licensing Officer Jo Quartley. In summary Mr Olmez has held a Premises Licence for his hot food take-away at the Favourite Chicken & Ribs in Market Street Trowbridge since November 2005, when the Licensing Act came into force. At that time the licence allowed the premises to operate until 1.30a.m on Sundays to Thursdays and until 4.30 a.m on Friday and Saturday nights.

15 In August 2009 Mr Olmez applied to the Council for a variation to the operating hours to 4.00 a.m on Sundays to Thursdays and until 5.00 a.m on Friday and Saturday nights. The police objected to this variation, but, after a hearing by the Council's Licensing Sub-Committee the variation was approved.

16 Since that date the police have become increasingly concerned at the level of crime and disorder associated with the premises. This led them to seek a review of the Premises Licence in June 2011 which resulted in the hearing of the Council's Licensing Sub-Committee on July 18th. At that hearing the police presented a significant amount of evidence of incidents of crime and disorder connected to the premises. This evidence was not disputed by Mr Olmez as evidenced in the minutes of that hearing.

17 Having heard the representations by the police and from Mr Olmez the Licensing Sub-Committee resolved to amend the conditions on Mr Olmez's Premises Licence for the Favourite Chicken in two main ways. Firstly the hours of operation were to be reduced so that trading ceased on Thursday, Friday and Saturday nights at 3.00 a.m rather than 4.00 a.m on Thursday nights and 5.00 a.m on Friday and Saturday nights. Secondly the Sub-Committee imposed a further condition on the Premises Licence requiring the provision of at least two SIA registered door staff from midnight until closing time on Thursday, Friday and Saturday nights. This decision was made in the light of the significant amount of evidence presented by the police regarding the level of crime and disorder associated with the premises. The information presented to the Licensing Sub-Committee at that hearing is reproduced in the exhibit to Ms Gallimore's first statement.

18 As Mr Olmez has appealed against the decision of the Licensing Sub-Committee these changes to the licence conditions do not take effect until the appeal has been disposed of by the Court.

Our decision is that we intend to substitute for the decision appealed against by the following.

Paragraph 1 Amended	Provision of late night refreshment.
Sunday –Wednesday	23.00 hours to 04.00 hours the following day
Thursday –Saturday	23.00 hours to 03.30 hours the following day

Paragraph 2 Remains the same

That the premises doors shall be closed and locked at the terminal hour of the licence on the relevant day

Paragraph 3 Amended

The licence holder is to employ two SIA registered staff from midnight to the terminal hour of the licence on Friday and Saturday nights.

Paragraph 4 Remains the same

CCTV will operate during licensable hours and record both internally and at the front of the premises externally. Recordings will be kept for a minimum of 30 days and will be made

available upon request, to the police, licensing officers and any authorised officer by staff suitably trained and competent in providing such information.

The existing conditions relating to staffing and litter as detailed in the current premises licence remain effective.

The reason for this decision to restrict the hours is that having heard from Mrs Gallimore and considered recorded incidents of violence and disorder we find that the vast majority of incidents occurred between on Friday and Saturday nights between the hours of 04.00 and 05.00

This is relevant in relation to the licensing objectives i.e.

The prevention of crime and disorder

Public safety

The prevention of public nuisance

All the incidents referred to can be directly linked to the premises, either inside, outside or in the direct vicinity.

Our reason for amending the provision of door staff is that we have taken into account representations and evidence from the Respondent that the requirement for door staff on a Thursday as far as the Police and the Licensing Authority were concerned was not an issue and they had no strong objections to provision on a Thursday. However given the incidents on Friday and Saturday nights in order to promote the licensing objectives of preventing crime and disorder public safety and preventing public nuisance two door staff are necessary from midnight to the terminal hour of the licence.