

SHERIFF COURT GLASGOW

B523/10

Act Book of Court

*Date 9<sup>th</sup> September 2010*

*Judgment by*

*Sheriff C A L Scott, Esquire, Advocate*

*in Causa*

Drinkcafe Limited t/a Boho

**Pursuer**

Against

The City of Glasgow Licensing Board

**Defender**

I certify that the judgment attached hereto was recorded in the Act Book of Court on this date.

  
**Sheriff Clerk Depute**

CIVJUDG.JH.R

B523/10

SHERIFFDOM GLASGOW AND STRATHKELVIN AT GLASGOW

J U D G M E N T

by

C A L SCOTT, Esquire, Advocate, Sheriff  
of Glasgow and Strathkelvin

*in causa*

DRINKCAFE LIMITED t/a BOHO, 59  
Dumbarton Road, Glasgow G11 6PD

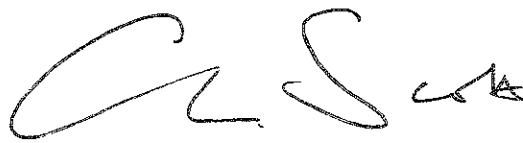
APPELLANTS

against

THE CITY OF GLASGOW LICENSING  
BOARD, City Chambers, Glasgow

RESPONDENTS

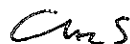
GLASGOW, 9<sup>th</sup> September 2010. The sheriff, having resumed consideration of the appeal, answers both of the questions posed in the stated case in the negative and refuses the appeal; finds the appellants liable to the respondents in the expenses of the appeal; allows an account thereof to be given in and remits the same, when lodged, to the auditor of court to tax and to report thereon; and certifies the appeal as being suitable for the employment of junior counsel.



SHERIFF

**NOTE:**

[1] This is an appeal under the Licensing (Scotland) Act 2005 against a decision of the City of Glasgow Licensing Board (hereinafter referred to as "the board") dated 18 January 2010. That decision embraced a refusal of the appellants' application to vary



the terms of their premises licence in respect of premises known as "BOHO" at 53 Dumbarton Road, Glasgow ("the premises").

[2] The application was refused in terms of section 30(5)(b) of the 2005 Act, having regard to the licensing objectives of preventing crime and disorder and preventing public nuisance.

[3] Comprehensive written submissions were tendered by counsel on both sides of the bar. These submissions are appended hereto and are referred to for their full terms.

[4] Under the old licensing regime, the premises had been trading as "an upmarket nightclub" and had consistently remained opened until 3.00 am each morning, with the benefit of a regular extension under section 64 of the 1976 Act. However, the board's policy under the 2005 Act is such that premises outwith the city centre should close no later than 2.00 am. Against that background, the appellants applied to vary their premises licence by extending the terminal hour to that of 3.00 am.

[5] Dealing with counsel for the appellants' submissions in the order in which they appear and were presented, the first contention was that no proper factual basis existed for holding that the grant of the application would prejudice the prevention of public nuisance and crime and disorder. In simple terms, it was argued that where the premises had, historically, remained opened until 3.00 am without incident, it followed that, all else being equal, the board could not reasonably refuse to reinstate 3.00 am as the terminal hour. The board had, it was submitted, asked themselves the wrong question. Inconsistency with the stated licensing objectives was the *de quo* of the matter, not inconsistency with the board's policy.

[6] Counsel for the appellants' approach to the matter, perhaps unsurprisingly, bore similarities to that adopted on behalf of the appellants in the recent case of **Brightcrew Ltd**. In that case, I dealt with what I considered to be the impact of the "interlocking, schematic arrangement" which the 2005 Act carried with it at paragraphs [22] to [31] in the decision section of my Note and, for present purposes, I refer to the views and observations contained therein.

[7] In this appeal, it is my opinion that board's approach to the appellants' application was perfectly sound in terms of the new legislation. As I mentioned in **Brightcrew** (paragraph [26]), each licensing board is statutorily obliged to formulate a licensing

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policy statement. Moreover, it remains my view that, under the 2005 Act framework, an exceptionally wide *vires* has emerged. (See **Brightcrew** at paragraph [29]).

[8] The appellants' reliance upon circumstances as they pertained whilst the 1976 Act was in force is, in my judgment, flawed for the obvious reason that an entirely new statutory framework now exists. The first ground of the appeal ignores the existence of a very real matrix of factors to which the board properly had regard.

[9] For the various reasons set out in the stated case, the board, *inter alia*, took account of considerations attaching to the "effective policing and management of large groups of people leaving licensed premises late at night". In particular, the stated case, correctly in my view, makes reference to the significance, in this context, of the statutory Guidance issued by Scottish Ministers. Having established a terminal hour differential between city centre and non-city centre premises, it was perfectly legitimate for the board to have regard to the wider considerations of policing and crowd management within the city as a whole, when they came to consider the appellants' application.

[10] In my view, for the reasons advanced by counsel for the board and given what appears within the stated case, the board's refusal of the application was demonstrably based upon the consideration that the granting of the application would be inconsistent with the licensing objectives of preventing crime and disorder and preventing public nuisance.

[11] Similarly, I do not consider there to be merit in the appellants' second ground of appeal or submission regarding the proposition that the board had, in effect, "reversed the onus". I am not satisfied that section 30(4) of the 2005 Act creates "a presumption of grant" as submitted by counsel for the appellants. Section 30(4)(a) and (b) merely provide a glimpse of the obvious. The operation of the subsection can be characterised thus; if a ground of refusal applies, the application will be refused; if not, it will be granted. Whether any ground of refusal applies depends upon the whole circumstances. Those circumstances include not just detail relating to the premises themselves but also consideration of ministerial Guidance and the board's policy insofar as these factors have any bearing upon consistency or otherwise with the licensing objectives.

[12] In any event, in the present case, there was, in my view, no shift of onus to the appellants. The identification and establishment of a ground or grounds of refusal

*Ans*

remained with the board. In the stated case, it is apparent that the board themselves approached the decision in that way. They considered that certain grounds of refusal applied and went on to explain, under reference to the ministerial Guidance and the board's policy on additional hours why those grounds applied. There was nothing untoward or illegitimate about the board being addressed on the contention that none of the grounds of refusal applied. It does not follow that there had been something akin to a reversal of onus.

[13] Finally, it was argued by the appellants that the board failed to provide adequate reasons for their decision. Looking to the stated case, there can be no doubt that the Board provided reasons for their decision and that those reasons were *prima facie* intelligible. To the extent envisaged by Lord Emslie in the **Wordie Property** case, as founded upon by counsel for the appellants, the board's reasons cannot be said to be anything other than adequate.

[14] I suspect counsel for the appellants' third leg of his submissions was, truly, an extension of his first, viz. that there was no proper basis for the board's decision notwithstanding the reasoning put forward in the stated case. That being so, let me deal with the contentions recorded on the final full page of counsel's written submissions.

[15] Here, counsel's approach on behalf of the appellants is too narrow, in my opinion. Under the 2005 Act, a licensing board such as that of the City of Glasgow must not merely scrutinise the operation of premises in isolation. To note that the premises had been "trouble free" and to conclude that the extra hour sought must, therefore, be "reinstated" would amount to a failure on the part of the board to implement its statutory duties in a full and proper manner. In contrast, a licensing board requires to look beyond (in this case, for example,) 53 Dumbarton Road. It must look to "the bigger picture" in the city as a whole. (See paragraph [9] *supra*.) That is what the board did in relation to this application and their approach is well articulated within the stated case.

[16] It follows that, in my opinion, this appeal is without merit and must be refused. I have found the respondents, the board, entitled to the expenses occasioned by the appeal procedure. I also considered it appropriate, in all the circumstances, to certify the appeal as suitable for the employment of junior counsel.

*CMS*