

IN THE BROMLEY MAGISTRATES' COURT

BETWEEN

WALK SAFE SECURITY SERVICES LIMITED

Appellant

- V -

LONDON BOROUGH OF LEWISHAM

Respondent

RULING ON PRELIMINARY ISSUE

1. On 30th March 2023, this court heard legal argument on a preliminary legal issue in the proceedings, which relate to a premises licensing appeal.
2. Both the Appellant and Respondent agree that it is appropriate for this legal issue to be resolved at this stage in the appeal proceedings.
3. Each party has prepared full and detailed skeleton arguments and advanced full argument at the hearing. I do not intend to repeat the arguments here, which are already set out in writing.
4. The Appellant seeks a determination, as a preliminary issue in the appeal proceedings, that the remote hearing procedure adopted by the Respondent licensing authority is not permitted in law and that the decision resulting from such a hearing is *ultra vires*. The Respondent applies under s.181(2)(c) of the Licensing Act 2003 for remittal of the case to the licensing authority to dispose of it. The Appellant argues that remote licensing hearings are lawful and permitted by the legislation.

Licensing Function

5. The licensing function of a licensing authority is an administrative function (*R (oao Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court & Ors [2011] EWCA Civ 31*). This function is regulated by the Licensing Act 2003 and the Licensing Act (Hearings) (England) Regulations 2005.

Licensing Act 2003 ('LA 2003')

6. S.9 of the LA 2003 makes provision for 'Proceedings of licensing committee'. S.9(2) sets out that Regulations may make provision about – (a) the proceedings of licensing committees and

their sub-committees (including provision about the validity of proceedings and the quorum for meetings), (b) public access to the meetings of those committees and sub-committees, (c) the publicity to be given to those meetings, (d) the agenda and records to be produced in respect of those meetings and (e) public access to such agendas and records and other information about those meetings.

7. S.9(3) provides that “Subject to any such regulations, each licensing committee may regulate its own procedure and that of its sub-committees.”
8. Whether a hearing is conducted in person or by remote means is a matter of procedure. S.9(3) provides each licensing committee with the independence to make its own procedural decisions, subject to the Regulations.
9. S.183(1) makes provision for “hearings” but nothing therein touches upon the issue of whether a hearing may be held remotely or whether it must be in person.

Licensing Act 2003 (Hearings Regulations) 2005 ('the Hearings Regulations 2005')

10. Regulation 21 of the Hearings Regulations 2005 (procedure at hearing) states that subject to the provisions of these Regulations the authority shall determine the procedure to be followed at the hearing.
11. The use of the word ‘subject’ implies that unless the Regulations specifically permit or prohibit remote hearings, then the authority may determine the matter for themselves. The Hearings Regulations 2005 do not refer to either remote hearings or to hearings where persons must be physically present. Regulation 21 reinforces the autonomy given to licensing committees by virtue of s.9(3) of the LA 2003.

s.182 Guidance

12. Regard must be given to this Guidance, pursuant to s.4(3) of the LA 2003. Paragraph 9 of the Guidance deals with hearings.
13. Paragraph 9.34 provides that “The hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.”

Caselaw

14. *Regina (Hertfordshire County Council and others) v Secretary of State for Housing, Communities and Local Government (No 1) [2021] EWHC 1093 (Admin)* is a case which concerned the lawfulness of remote ‘meetings’ of statutory authorities under the Local Government Act 1972 (LGA 1972). The High Court held that “meeting” referred to an in-person meeting taking place at a particular geographical location.

15. The case does not concern licensing hearings under the LA 2003. Indeed, s.101(15) of the LGA 1972 states that nothing in this section applies in relation to any function under the LA 2003 of a licensing authority.
16. Schedule 12 of the LGA 1972 sets out the rules for holding council meetings. Paragraph 4(1) stipulates that meetings of a principal council shall be held “at such place, either within or without their area, as they may direct.” Further paragraph 4 (1A)(b) refers to a “summons to attend the meeting”. This language is used in other provisions within Schedule 12.
17. Notably, the judgment at [75] and [76] states:

“We can readily accept that "meeting" can, in some contexts, encompass virtual or remote meetings: since March 2020 it has become common to refer to a "Zoom meeting". But in other contexts "meeting" would not carry that meaning. If a meeting is to be "either in or outside London", one would not expect it to be conducted online. The question for us is not what "meeting" means in the abstract, or in some other context, but what it means in the particular statutory context of Schedule 12 to the 1972 Act.

[76] That being so, the meaning of "meeting" must in our judgment be informed by reading Schedule 12 as a whole. This includes the obligations to hold the meeting "at such place, either within or without their area" as a principal council, parish council or community council may direct (paragraphs 4(1), 10(1) and 26(1)), to publish "notice of the time and place of the intended meeting" and to send out "a summons to attend the meeting" (see e.g. paragraphs 4(1A), 4(2), 10(2), 26(2)). In our view, a "place within or without the area" is most naturally interpreted as a reference to a particular geographical location and would not naturally encompass an online location; and a requirement to send out "notice of the time and place of the intended meeting" is inconsistent with the idea of a meeting taking place at multiple locations (e.g. in the homes of all participants).”

18. The LA 2003 and the Hearings Regulations 2005 do refer to “place” but there is no reference to a place “within or without their area” whatsoever. The statutory wording in the LA 2003 is different and connotes a different meaning. Importantly, the judgment in the Hertfordshire case, as cited above, does not exclude the possibility of a “meeting” including a virtual location. The decision of the High court was arrived at after close examination of Schedule 12 of the LGA 1972.
19. Since the case deals with a different legislative framework, it seems to me that it does not assist on the preliminary legal issue in the present case.

Wales

20. The LA 2003 applies to both England and Wales (by virtue of s.201(3) LA 2003), however the Welsh Senedd has legislated for local authorities to make arrangements enabling remote attendance at meetings through the Local Government and Elections (Wales) Act 2021.
21. The Regulations for Welsh authorities make express provision for remote hearings and clarify any ambiguity in the law. The appellant argues that the significance is that prior to such specific provision, remote hearings were not permissible. It is equally arguable that the Welsh

Parliament has simply sought to make clear and particular provision for remote hearings. It does not necessarily follow that the legislation applying in England prohibits remote hearings.

Determination of Legal Issue

22. The relevant legislative framework uses the word 'place' to describe where a licensing hearing is to be held. 'Place' is not defined in either the LA 2003 or the Hearings Regulations 2005. A 'place' may be a physical location, but I see no reason why it cannot be a virtual platform. Nor do I see any reason why 'attend' cannot include electronic attendance. There is nothing within the language of the provisions which limits the scope of the word 'place' (as there is in the LGA 1972).
23. s.9(3), Regulation 21, and Paragraph 9.34 of the Revised Guidance, all give the licensing authority autonomy to make their own arrangements with regards to conducting hearings, provided that there is no specific provision in either the Act, Regulations or Guidance.
24. The Regulations do not make any provision regarding remote hearings. Therefore, in the absence of any such provision, it seems to me that s.9(3) of the LA 2003 applies, which allows each licensing committee to regulate its own procedure. Whether a hearing is conducted in person, or remotely, is a matter of procedure.
25. Since there is no prohibition on remote hearings, the London Borough of Lewisham is able to determine its own procedure. The remote conduct of a licensing hearing is permitted in law.

Nermine Abdel Sayed

District Judge (Magistrates' Court)

Bromley Magistrates' Court

17th April 2023