

### **Birch House Business Centre Ltd v Denbighshire County Council**

#### **Case Summary:**

On the 8th December 2010, District Judge Shaw in Llandudno Magistrates' Court awarded record costs of £24,600 against Denbighshire County Council in a Licensing Appeal.

The V2 Nightclub had been on the receiving end of three consecutive review applications by North Wales Police. The District Judge was deeply critical of the presentation of police evidence of incidents implicating the premises. The police presented a "Summary" of incidents, in the form of a document prepared for the hearing by police officers, and including a 'Summary Log', and 'Analysis', and a "Hot Spot".

Despite two clear Court directions requiring the disclosure of the original incidents upon which the "summaries" had been based, such records were not made available. Some original records were served three working days before the Appeal hearing, and others were served on the first morning of the Appeal.

The disclosure revealed that the police presentation of evidence had been selective. Numerous residents' complaints about the premises had been reported to the police, but original incident logs showed that the police at the time had rejected a number of them as being clearly mistaken or exaggerated. Nevertheless, those same complaints were included in the police "Summaries" and "Hot Spot" maps, presented to the Sub-Committee. Further proper analysis of the original incident reports showed that certain allegations could not have been the responsibility of the licensed premises, and still more were ambiguous in nature.

In his critical judgment, District Judge Shaw found not only that the police had misled the Sub-Committee in their presentation of this evidence, but that the Council also had to bear responsibility for not scrutinising what they were being shown with more care. He made it plain that he regarded it as the responsibility of the Council to call for original and reliable evidence - certainly pending an appeal, and to assure themselves, based on that evidence, that resisting the appeal was the appropriate course. In this case, the Council had made no such attempt to secure these records, and the Council resisted the appeal until the eleventh hour, when it was finally accepted that the evidence was deeply flawed.

The appeal was resolved by way of the imposition of conditions that could have been agreed many months before.

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