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Ref: TRE10953

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 03/05/2019

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

IN THE MATTER OF AN APPLICATION BY CREAGH CONCRETE LTD FOR
AN OCCASIONAL LICENCE PURSUANT TO ARTICLE 30 OF THE LICENSING
(NI) ORDER 1999

IN THE MATTER OF AN APPEAL BY
CREAGH CONCRETE PRODUCTS LIMITED

IN THE MATTER OF A CASE STATED PURSUANT TO ARTICLE 61(2) OF THE
COUNTY COURTS (NORTHERN IRELAND) ORDER 1980 ON A POINT OF
LAW BY THE RECORDER, HIS HONOUR JUDGE BABINGTON

Deeny LJ, Treacy LJ, Sir Richard McLaughlin

TREACY LJ (*Delivering the Judgment of the Court*)

Introduction

[1] This is an appeal by way of case stated from a decision given by His Honour Judge Babington. He had been asked to consider whether an occasional licence could be granted to the holder of a pub licence, thereby enabling it to sell alcohol in a de-licensed function room which is attached to its licensed premises.

Background

[2] The Appellant is Creagh Concrete Products Limited, the licence holder under Article 5(1)(a) of the Licensing (Northern Ireland) Order 1996 ("the 1996 Order") for premises at the Elk Inn, Toombridge. An Occasional Licence application for the function room at the Elk Inn was made by the Appellant on 20 March 2018 in relation to an event organised by Granahan Outreach to be held on Saturday 14 April 2018 between 9.00pm and 1.00am. The function room at the Elk Inn was de-licensed in December 2016 so that underage functions could take place in that part of the premises.

[3] On 28 March 2018, District Judge Mullan refused to grant the Occasional Licence sought for two reasons. These were first, that there is no basis for importing the word "licensed" into Article 30 of the 1996 Order. "The term 'licensed premises' is

used extensively in the 1996 Order. The Court cannot assume that the word was omitted from Article 30 other than deliberately". Secondly, the District Judge raised the issue of the nature of the occasional licence and was not satisfied that this was a bona fide application. "I continue to be of the view that the Applicant is using the Occasional Licences process to cover DJ evenings and other events organised by the club itself. [I] would remind them of the restrictions on the use of occasional licence."

[4] The case came before Judge Babington by way of an unsuccessful appeal on 9 April 2018. The Recorder was asked to consider whether an occasional Licence could be granted in respect of an unlicensed part of the building which lies within the curtilage of the licensed premises. The Recorder decided that Article 30 of the 1996 Order refers to premises not licensed premises. The Recorder concluded that the definition in Article 2(3) of the 1996 Order defining "premises" means anything within the normal boundary line of the premises which is usually shown as a red line.

[5] The question stated by the Recorder for the opinion of the Court of Appeal is:

"Was I right in law in deciding that the Applicant was not permitted to apply for an Occasional Licence for an unlicensed part of its premises pursuant to Article 30 of the Licensing (NI) Order 1996?"

Licensing (Northern Ireland) Order 1996

[6] An application for an occasional licence must be brought in accordance with Article 30 of, and Schedule 7 to, the 1996 Order. Rule 8 of the Magistrates' Courts (Licensing) Rules (Northern Ireland) 1997 ("the 1997 Rules") prescribes the form that must be completed in an application for the grant of an occasional licence. This is Form 10, supported by a statement from the organisers of the function in the prescribed form. The applicant for the occasional licence must be a holder of a licence to whom Article 30 of the 1996 Order applies. The occasional licence may only authorise the sale of alcohol as ancillary to a function of an occasional nature falling within Article 30(6) of the 1996 Order which provides as follows:

"The functions to which sub-paragraph (5)(a) applies are functions of an occasional nature which are organised by any body established for social, charitable or benevolent purposes or for furthering the common interests of persons associated with any trade, profession, educational or cultural activity, game or sport."

Legislation

[7] The relevant legislative provisions are as follows:

Article 30(1) of the Licensing (NI) Order 1996 provides as follows:

“30. – (1) A court of summary jurisdiction ... may, on an application made, in compliance with the procedure set out in Schedule 7, by a person who is the holder of a licence for premises to which this Article applies, grant an occasional licence authorising that person to sell intoxicating liquor by retail –

(a) subject to paragraph (2), at such place, other than those premises ...”

Article 30(14) sets out:

“The premises to which this Article applies are –

(a) Premises of a kind mentioned in Article 5(1)(a);

(b) A hotel;

(c) A restaurant”.

Article 2(2) defines licensed premises as follows:

“(a) Except in the case of a hotel, means the part or parts of the premises for which a licence is in force which are delineated in the plan kept by the Clerk of Petty Sessions as the part or parts of those premises in which intoxicating liquor is permitted to be sold by retail.

(a) In the case of a hotel, means the hotel premises.”

Article 2(3) reads:

“References in the Order to premises include references to their curtilages”.

[8] Until December 2016 the premises at the Elk Inn had included the function room which was the subject of this occasional licence application. In December 2016 the Appellant had applied to have this function room de-licensed so that it could lawfully hold underage functions in that room. That de-licensing application was granted, and the plan held by the relevant clerk of petty sessions for the purposes of Art 2(2) above was amended to exclude this function room. This occasional licence application was therefore an application to temporarily re-licence a room which had

earlier been de-licensed, and which at all times was connected to, and lay within the curtilage of, licensed premises owned by the Appellant.

The Legal Arguments

[9] The arguments advanced on behalf of the appellant may be summarised as follows.

[10] The issue is whether an unlicensed part of premises owned/occupied by a licence holder is part of the licensed premises for the purposes of Article 30 thereby precluding the Applicant from making an occasional licence application in respect of the unlicensed function room. It is the Applicant's contention that it is plainly not part of the licensed premises for the purposes of the 1996 Order for a number of pertinent reasons.

[11] Article 30 of the Licensing Order is a plainly permissive, rather than restrictive, part of the licensing code. Article 30(1)(a) is merely explanatory of what is permitted and is not designed as a prohibition. The purpose of the provision permitting occasional licences is simply to permit licences to be obtained occasionally for premises other than premises that are in fact licensed. Accordingly, when the Order refers to a place, other than those premises, it is merely referring to a place that is not already licensed. Obviously an occasional licence would never be required for a place that is licensed.

[12] The person who can apply for an occasional licence is the holder of a licence for premises to which the Article applies, ie the licensed premises. Those premises are defined by Article 30(14) as 5(1)(a) premises, a hotel or a restaurant. Licensed premises, other than a hotel, mean the part or parts of the premises for which a licence is in force which are delineated in the plan kept by the Clerk of Petty Sessions as the part or parts of those premises in which intoxicating liquor is permitted to be sold by retail. Accordingly, the application by the holder of the licence for the Elk Inn is for an occasional licence for a place other than those licensed premises, as the function room is not part of the licensed premises.

[13] The fact that the definition of premises in the general sense includes the curtilage is not relevant to this consideration. The issue of curtilage of premises is relevant to some parts of the licensing code but is not relevant to the issue of occasional licences.

[14] If a prohibitive interpretation was correct it would mean a holder of a licence other than the Elk Inn would be able to apply for an occasional licence for the function room at the Elk Inn whereas the holder of the licence at the Elk Inn could not. This, it is contended, would be a plainly ridiculous result and contrary to a true and purposive interpretation of the legislation.

[15] The issue of what forms part of the licensed premises is dealt with in E J David McBrien's book "The Liquor Licensing Laws of Northern Ireland" First Edition para 2:17 which states:

"It is important for a licence holder to ensure that the plans as lodged in the office of the Clerk of Petty Sessions accurately reflect the area which he wishes to have licensed for the sale of intoxicating liquor. It will be these plans which will define the 'licensed premises'."

[16] The case stated notes:

"7. The issue before the Court was as follows - can an Occasional Licence be granted to an application in respect of an unlicensed part of his building which lies within the curtilage of his licensed premises. In this case the whole building known as The Elk is one and each part is interconnected with the other. Indeed there are several entrances and exits that can be clearly seen on the plan as well as interconnecting doors and areas.

8. Applications for Occasional Licences are dealt with under Article 30 of the Order - in particular Article 30(1)(a) which states:

A court of summary jurisdiction or a Clerk of Petty Sessions acting under Paragraph (3), may, on an application made, in compliance with the procedure set out in Schedule 7, by a person who is the holder of a licence for premises to which this Article applies, grant an occasional licence authorising that person to sell intoxicating liquor by retail -

(a) subject to paragraph (2), at such place, other than those premises and ..."

9. Article 30(14) confirms that the Article applies to holders of Article 5(1)(a) licences as here.

10. Article 2(2) defines licenced premises as follows:

"(a) Except in the case of a hotel, means the part or parts of the premises for which a licence is in

force which are delineated in the plan kept under Article 34(2) as that part or parts of those premises in which intoxicating liquor is permitted to be sold by retail.

(b) In the case of a hotel, means the hotel premises."

11. Article 2(3) defines premises as follows:

"References in this order to premises include references to their curtilages".

12. I decided that Article 30 refers to premises, not licenced premises. I also decided that the definition in Article 2(3) in reality means anything within the normal boundary line of the premises which is usually shown as a red line whereas Article 2(2) suggests it is only the parts that are licenced in accordance with the deposited plans.

...

15. The Court concluded that the legislature has inserted into the Order the word "premises" as opposed to "licenced premises" and defines both as meaning not surprisingly different things. Premises in the Court's view are quite clearly defined as being outside the curtilage of an applicant's property. ...

16. In the Court's view for the application to be successful it would be necessary for the legislature to say so in Article 30 - in other words to make it clear that holders of Article 5(1)(a) licences could have licenced parts of their premises that were not defined on the plan kept by the Clerk of Petty Sessions under Article 34(2) of the Order. This has not been done. The words "licenced premises" appear on many occasions in the order but in my opinion significantly not in Article 30.

17. I have been asked to state a case for the opinion of Her Majesty's Court of Appeal in Northern Ireland on the following point of law:

"Was I right in law in deciding that the Applicant was not permitted to apply for an Occasional Licence for an unlicensed part of

the premises pursuant to Article 30 of the Licensing Order (NI) 1996.””

Discussion

[17] The interpretation reached by the Learned Recorder finds some support in the statutory provisions, especially when different parts of the licensing code are cross-referenced with each other. We find greater force in the argument of Mr McCollum QC, on behalf of the appellant, that this restrictive interpretation of the statutory language ‘would mean a holder of a licence other than the Elk Inn would be able to apply for an occasional licence for the function room at the Elk Inn whereas the holder of the licence at the Elk Inn could not.’ The Attorney General for NI supported the interpretation advanced by Mr McCollum.

[18] We have sought to resolve the dilemma by looking again at the terms of Article. 30. The main purpose of this provision is to allow:

“A person who is the holder of a licence for premises to which this article applies ...’ to apply for ‘an occasional licence authorising that person to sell intoxicating liquor by retail’

(a) ... at a place other than those premises’

[19] Articles 30(13) and (14) are also relevant to understanding the legislative intention. They provide:

“(13) In this Article “place” includes “premises”.

(14) The premises to which this Article applies are—

(a) premises of a kind mentioned in Article 5(1)(a);

(b) an hotel;

(c) a restaurant.”

[20] Taken as a whole then Article 30(1) intends to allow the three principal types of existing owners of licensed premises to sell alcohol at a place ‘other than those premises’.

[21] The defining qualification for the permitted applicants therefore is one of three identified kinds of licensed premises, and the statutory scheme is designed to allow these persons to seek permission to extend their existing licences to ‘other’ places - ie places other than the licensed premises with which they are associated.

[22] What are the licensed premises from which these 'other places' are to be distinguished? We cannot but conclude that they are 'licensed premises' as defined in Art 2(2) of the Order:

“(a) Except in the case of a hotel, means the part or parts of the premises for which a licence is in force which are delineated in the plan kept by the Clerk of Petty Sessions as the part or parts of those premises in which intoxicating liquor is permitted to be sold by retail.

(c) In the case of a hotel, means the hotel premises.”

Conclusion

[23] For the reasons given above it is our view that the answer to the question posed in this case stated must be 'No'.

[24] By itself this decision does not, of course, dispose of cases like this one. While it may now be considered possible to apply for an occasional licence for an unlicensed part of a bar premises, it will remain necessary for each applicant in cases of this kind to satisfy the other requirements of Article 30, including being able to satisfy the relevant court of the *bona fides* of the application. This will involve proving to the court that the event for which an Article 30 licence is sought is a genuine 'occasional' event organised by a body which satisfies all the relevant criteria. The District Judge who dealt with the initial application in this case was not so satisfied, and this decision does not change that part of the present case in any way. This ruling deals exclusively with the point of statutory interpretation raised in the case stated which was referred to us and, going forward, it will be a matter for the magistrates' court to satisfy itself that all the requirements of Article 30, as we have interpreted it above, are fully complied with in every future case.