

Neutral Citation no. [2003] NIQB 28

Ref: NICEF3903

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

Delivered: 08/04/2003

ON APPEAL FROM THE COUNTY COURT FOR THE DIVISION OF
ARMAGH AND SOUTH DOWN

BETWEEN:

ARMAGH CITY AND DISTRICT COUNCIL
and
JOHN McNALLY

Applicants/Appellants;

-and-

THE POLICE SERVICE FOR NORTHERN IRELAND

Objector/Respondent.

NICHOLSON LJ

[1] This is an appeal from the decision of His Honour Judge McKay QC dated 12 December 2002 whereby an application for the grant of an intoxicating liquor licence for premises at the Market Place Conference Centre, Market Street, Armagh, was refused.

[2] As is so often the case, the evidence presented on the hearing of the appeal was much more extensive and elaborate than was presented before the County Court Judge.

[3] Under Article 5(1) of the Licensing (NI) Order 1996 the premises in which the sale of intoxicating liquor is authorised by a licence include an hotel, a guest house, a restaurant, a conference centre, a higher education institution, a place of public entertainment and other premises set out at Article 5(1)(a) and (b) and 5(1)(i) and (j).

[4] A conference centre is defined by Article 2 of the Order as meaning "any premises for which there is in force a certificate from the Northern Ireland Tourist Board stating that the conference centre conforms to the

requirements prescribed by regulations made with the concurrence of the Department of Economic Development". Such a certificate has been issued for these premises.

[5] The person to whom a licence is granted "... shall be the owner of the business proposed to be carried on under the licence": see Article 4 of the Order. This includes a partnership and there is a partnership agreement between the appellants.

[6] By Article 5(3) it is provided that a licence shall not authorise the sale of intoxicating liquor in a conference centre (1) unless (i) there is being carried on in those premises a business of the type normally carried on in premises of that kind; (ii) the sale of intoxicating liquor is ancillary to that business. I deal with the submissions on the construction of Article 5(3) later in this judgment.

[7] Applications for the grant of a licence are governed by Article 7 of Part I of Schedule 1 of the Order. A court shall refuse an application "... unless it is satisfied ... (c) that the premises are of the kind specified in the application and (d) ... that the premises are suitable for the sale of intoxicating liquor by retail."

[8] The provisions applicable to "in/off" licensed premises and "off" licensed premises which require proof of inadequacy of the number of licensed premises and the surrender of a subsisting licence do not apply to premises referred to in Article 5(1)(c) to (j). Hence the response by the Federation of the Retail Licence Trade NI to the proposals for the draft Order of 1996 made in March 1996. They made representations about the difficulties of interpretation and enforcement when the sale of liquor is alleged to be "ancillary to the main business" and they urged that the terms and definitions and opening hours for conference centres be allied more closely to the premises for places of public entertainment. They argued that the proposal to permit additional hours under Article 44 appeared illogical. Notwithstanding their response the Order of 1996 was enacted in its present form.

[9] Article 44 provides for Orders to be made by the court granting a licence to, inter alia, a conference centre for intoxicating liquor in accordance with the provisions of that Article. I will examine the requirements of this Article in more detail later in this judgment.

[10] Provisions for objection to the grant of such a licence are contained in Schedule 1 of the Order. The Police Service for Northern Ireland objected to the grant of a licence for these provisions before His Honour Judge McKay QC on the grounds that the premises were not of the kind specified in the licence. It appeared to me that the kernel of their objection was that the business carried on in that part of the premises known as Papa Nero's was not

ancillary to the main businesses of the conferences centres and I have treated their objection as directed to that issue. No disadvantage is suffered by the appellant as this was the thrust of the police objection at the hearing before the County Court Judge.

[11] Regulations were made in 1997 governing the licensing of conference centres, described as the Licensing (Requirements for Conference Centre) Regulations (Northern Ireland) 1997. By Article 2 the premises are required to have a specialised conference brochure or otherwise advertise the provision of conference facilities as one of the main businesses carried on in the premises. The premises must have a minimum of two conference rooms,. Seating requirements are specified and must be capable of providing a main table meal for up to 60 delegates simultaneously. There are other requirements set out at Articles 2(c) to (f). The premises comply with the Regulations.

[12] It appears that there are at present four conference centres in Northern Ireland which comply with the definition of conference centre contained in the Order of 1996. These are the Belfast Waterfront Hall, the Market Place Centre, Armagh, the Island Civic Centre, Lisburn and Lusty Beg in County Fermanagh. An application for a licence is pending for the Millennium Forum in Derry and, I was told, the Council offices in Ballymena are being demolished with a view to building a conference centre.

[13] The definition of 'conference centre' is vague and, no doubt, that was the intention of the legislature. The provision of conference facilities must be one of the main businesses but no restriction is placed on the other businesses to be carried on. Businesses other than "main businesses" can be carried on and the definition of "business" is as vague as the definition of "conference centre". The Tourist Board determines whether premises shall be regarded as a conference centre and, presumably, the plans for the premises must be submitted to and approved of by the Tourist Board. The provision of conference facilities is obviously regarded as important but there are many other activities or "businesses" which Government, the Tourist Board and Councils such as the Armagh City and District Council must be anxious to promote in order to encourage tourism and enhance the quality of life of the citizens of Northern Ireland.

[14] The conference centre in Armagh took as its model the Belfast Waterfront Hall. I was shown the plans and photographs of the auditorium, the conference rooms, the restaurants and the kitchen. The site was chosen as the focus of a major regeneration of the centre of the City of Armagh and the premises were constructed in 1999-2000 at a cost of £6.5m provided out of public funds, lottery money and ratepayers' money.

[15] The brochure refers to the fact that the auditorium can provide for almost 400 persons and makes it "an ideal venue for medium to large

conferences, product launches and symposia Is equipped with state-of-the-art lighting and sound facilities” and lists a number of other facilities. The photographs of it are very impressive.

[16] In addition to the auditorium, there is an art gallery which caters for approximately 80 persons at any one time. There is a studio theatre with tiered seating for 100 persons. This seating is retractable and there is flexible seating for 120 persons. The brochure states: “The studio is an ideal venue for smaller conferences, banquets, corporate entertainment and product launches”. There are three other conferences rooms which are multi-purpose rooms catering for all scales of meetings, seminars, workshops, rehearsals and other activities, ranging from 100 persons down to 20 persons. A document showing venue hire and equipment charges for the period April 2003-March 2004 indicated the wide range of equipment available for these rooms.

[17] Mr McNally, who is in partnership with the Council as applicants for the licence, owns a restaurant in Armagh. At the conference centre there are two restaurants, the larger of which can cater for 75 persons at level 2 of the centre and the smaller of which can cater for 45-60 persons at level 3: see the plans and photographs produced to the court. Five full-time and one part-time chefs and ten part-time staff are employed. A bistro or evening menu, which changes every 3-5 weeks was produced as was the lunch menu and a description of the various buffets and refreshments which are available. They are intended primarily for those attending events in the auditoria and the conferences, seminars etc. He agreed that the sloping lay-out of the centre enabled the public to come into the restaurant area at level 2 and that he advertised in the Ulster Gazette, the local newspaper, for Papa Neros. But he added that only a small number of members of the public come to it off the street and that in the evening most people come to use the restaurant facilities before or after an event in one of the auditoria. From time to time he would book bands to provide entertainment but there was no dancing. I suspect that he minimised the numbers coming directly into Papa Nero’s.

[18] The partnership agreement provides by Clause 3.3-5.

“Functions organised by the Council shall at all times have priority and the caterer (Mr McNally) agrees not to accept any bookings without first confirming availability with the Council. There is a joint Catering Committee between the Council and the caterer under Clause 7.8.”

[19] I heard evidence from Victor Brownlees, Chief Executive of the centre, from Jill Holmes, Director of the centre and from Vincent McCann, Manager of the conferences and was satisfied that the restaurant and bar services provided at Papa Neros were an integral part of the conference centre as a

whole and that it could not be said that there were two independent businesses being carried on. One of the aims of the centre was to bring people back into the city centre in the evenings. There is extensive liaison between Jill Holmes, Vincent McCann and Mr McNally.

[20] If the rest of the conference area is closed, so is the restaurant area. Some of the entertainment provided in the restaurant area is chosen by Mr McCann, such as jazz events. Exhibitions of paintings are shown in that area and those using the facilities of the restaurants have access to leaflets and brochures advertising events in the rest of the centre. There is a business being carried on in Papa Nero's but on the evidence which I heard it is an essential part of the success of the centre.

[21] One of the most important documents produced at this hearing but not placed before the County Court Judge indicated that there were and will be evening events taking place in the centre between February 2002 and August 2003 when the restaurant area has been and will be open. There have been 1,755 events throughout the centre. 358 performances were held mainly in the main auditorium. There were 825 exhibitions 391 conference events and 181 events involving a mixture of musical entertainment, charity functions or similar functions in the restaurant area. A total of 59,000 persons have attended performances, exhibitions and conferences. These figures are based on actual booking figures and do not include casual visitors to exhibitions.

[22] One of the most significant facts, I consider, is that on Mondays to Thursday the centre opens at 9.30 am and normally closes at 4.30 pm. That is to say, the restaurant area does not open on Mondays to Thursdays in the evenings when the rest of the centre is closed. In my view this shows conclusively that this is not an independent business. No restaurant or public house would operate in such a way, if it was an independent business.

[23] The centre comes into its own on Fridays and Saturdays when it is open from 9.30 am to 1.00 am. On Sundays the centre is normally closed. There are exceptions to this general rule when there are evening performances on days other than Friday and Saturday but these are exceptional.

[24] In the period of 18 months to which I have referred at [21] there will have been two occasions when the rest of the centre has been closed and the restaurant area has been open. The first was on 28 April 2002 when there was a charity function in the restaurant and the second was on 24 December 2002 when there was entertainment in the restaurant.

[25] I annex to this judgment the brochure for the centre, the photographs of the main auditorium, conference rooms, restaurants and kitchen and the

list of events held or to be held in the centre between February 2002 and August 2003.

[25] I refer back to Article 5(3) and to paragraph 6 of this judgment. I also refer back to Article 44 and paragraph 9.

[26] Mr Mercer on behalf of the PSNI submitted that a licence for the sale of intoxicating liquor in a conference centre could not be authorised unless there was being carried on in those premises at the same time a business of the type normally carried on in premises of that kind. He argued that the evidence indicated that the use of the auditoria, conference rooms and other facilities either had not started or had finished when the sale of intoxicating liquor was taking place.

[27] I reject this argument. In my view the provision of restaurant facilities and intoxicating liquor sales is designed to augment and enhance the events which take place in the conference centre. The centre is organised in a similar way to the Belfast Waterfront Hall. It was not intended by the legislature that on any given day intoxicating liquor could only be sold whilst an event was taking place in the centre. For example, one of the events in the main auditorium has been a performance by the Moscow ballet. Alcohol is not permitted to be sold or consumed in the main auditorium although it is part of the licensed area. It cannot have been intended that the members of the audience would have to leave during the course of the performance in order that they should have an alcoholic drink.

[28] “Business” is defined by Article 2 as including any business whether or not carried on for profit. A conference centre is obliged by Regulations to provide catering facilities. In my view a restaurant business is a business of the type normally carried on in a conference centre. Therefore, whether or not there is an event which is being carried on in the centre to which the sale of intoxicating liquor is an adjunct, a restaurant business could not reasonably be expected to be carried on without a licence for the sale of intoxicating liquor, provided that it measures up to Tourist Board standards.

[29] The second submission made by Mr Mercer on behalf of the police is that the sale of intoxicating liquor is not ancillary to the business. In my view there are a number of businesses being carried on in the conference centre, the constituent elements of which make a coherent whole. There may not be an obvious nexus between a theatre, an art gallery, a conference room, a workshop for arts and crafts, a seminar or other such facility. But when they are combined, they provide a cultural centre. The legislature has chosen to call such premises a conference centre. A restaurant is desirable to service such facilities and so is a licence for the sale of intoxicating liquor.

[30] Under Article 5(3) the sale of intoxicating liquor must be ancillary to those businesses. It was argued that advertisements for the restaurant business contravened the intention of the legislative. I cannot accept that. Each business carried on in the premises should aim to enhance the prestige of the centre. The use of the words “that business” includes not merely the business of the restaurant but also any other business carried on in the premises which make it a conference centre. The 1997 Regulations refer to “main business” carried on in the premises, indicating that a number of main businesses may be carried on.

[31] As to the meaning of “ancillary” reference was made to R v Liverpool Licensing Justices, Ex parte Tynan [1961] 1 WLR 837, In the matter of an application by James McCloskey [1985] 11 NIJB 86 and In Re Hegarty’s Application [1991] NI 172. The decision as to whether the sale of intoxicating liquor is ancillary to the business of the restaurant or the businesses of the centre is a matter of fact and degree.

[32] On the evidence presented to this court I have no hesitation in concluding that the sale of intoxicating liquor is ancillary to the businesses carried on in the centre and to the business of the restaurant. Nothing is to be gained by the balance sheet approach, rejected in Ex parte Tynan and in Re James McCloskey’s application.

[33] Article 44 of the 1996 order provides that “where part or parts of the premises which are or which include premises to which this Article applies, are structurally adapted and used, or intended to be used, for the purpose of habitually providing, for the accommodation of persons frequenting it, such entertainment or refreshment as is mentioned in paragraph 2(i), (ii) or (iii) and the sale of intoxicating liquor is ancillary to that entertainment or refreshment, (a) a county court which grants a licence .. or (b) a court of summary jurisdiction ... may make an order under this paragraph.”

[34] Paragraph (2) provides that an Order under paragraph (1) may direct that, on such days as may be specified in the Order, the hours -

(a) on week-days from 11 in the evening to 1 in the morning of the day next following, and

(b) on Sunday, not being 31 December, from 10 in the evening to 12 in the evening, and

(c) on Sunday, being 31 December, from 10 in the evening to 1 in the morning of the day next following,

shall in addition to the hours mentioned in Article 42(1), be included in the permitted hours for any such part or parts of the premises specified in the Order for the purposes of the sale, before the provision of -

- (i) musical or other entertainment; or
- (ii) substantial refreshment; or
- (iii) both such entertainment and refreshment;

has ended, of intoxicating liquor for consumption on any such part or parts of the premises, and the consumption of such liquor.

[35] The provisions of paragraphs 3,5 and 9 especially 5, ensure or should ensure that the additional permitted hours are not misused.

[36] The Police Service are to be commended for ensuring that the application is being made by the Council and Mr McNally in partnership and for the steps which have been taken in connection with advertisements for the centre and for that part of it which is know as Papa Nero's in order to ensure that the restaurant, with its bar facilities, plays a useful part in the regeneration of the city centre of Armagh. The Market Place Centre will, it is to be hoped, prove a useful model for other community centres in Northern Ireland.

[37] Accordingly I reverse the decision of His Honour Judge McKay. As I have already stated, the evidence placed before me was very much more comprehensive than the evidence presented to him. I make an Order under Article 44 directing that when another part of the community centre is open on any evening in the week and the restaurant provides facilities for that part of the centre, the hours specified in paragraphs (2)(a),(b) and (c) shall be included in the permitted hours, provided that the requirements of Article 44 (1) to (3) and (8) and (9) are complied with as I am presently satisfied that they are on the evidence presented to me.