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Judgment: approved by the Court for handing down | *Delivered:* **21/06/12**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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IN THE MATTER OF AN APPLICATION BY SAINSBURY'S SUPERMARKET LTD

Applicant/Respondent;

-and-

WINEMARK THE WINE MERCHANTS LIMITED, WINE INNS LIMITED, PHILLIP RUSSELL LIMITED AND TOBY INNS LIMITED

Objectors/Appellants.

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GILLEN J

Application

[1] This is an appeal against the grant of an application for a provisional grant of a licence under Articles 2, 5(1)(b), 7 and 9 and Schedule 1 of the Licensing (NI) Order 1996(the 1996 Order) at Unit 2, Balloo Retail Park, Bangor.

[2] At the outset of the appeal counsel on behalf of the fourth defendant withdrew its objection.

[3] In the course of the hearing, Mr Beattie QC who appeared on behalf of the remaining objectors with Mr O'Connor explained the setup of the objecting companies concerned. Golf Holdings Limited is the principal company. Phillip Russell Limited and Wine Inns Limited are subsidiaries. Winemark The Wine Merchants Limited is a subsidiary of Wine Inns Limited. On one of a number of helpful maps provided to me (Map A) the following Off Licenses, inter alia, were depicted

- A Winemark on the Rathgael Road (approximately 2.4 kilometres from the subject site)
- A Wineworld on the Clandeboye Road

- A Russell Cellars on the Clandeboye Road (approximately 2.3 kilometres from the subject site)
- A Wineworld on Bloomfield Road South (the subsisting license to be surrendered)
- Marks and Spencer and Tesco in the Bloomfield Centre
- A Lidl on the Bloomfield Road
- A Wineworld on Balloo Road

The location of the site

[4] The location of the proposed off-sales outlet is at Balloo Link, Bangor. The store has been created by a major extension to the Homebase complex which has been trading in the location for several years. It is sited within an area of mixed uses including retail, commercial, and office, residential, light industrial and open space. Mr Foster, planning consultant on behalf of the applicant, has calculated that there are 192 businesses within the area of Sainsbury's food store which does not include a subsisting off sales provision ("the Balloo complex").

[5] The northern boundary of the complex is that length of the South Circular Road from the roundabout at Newtownards Road to a point where the eastern boundary of the complex meets the South Circular Road. That road is a major traffic distributor route within Bangor. It comprises a dual carriageway along the northern side of the site.

[6] The eastern boundary of the complex is lined by a physical separation between the complex buildings and the residential areas of housing in Ballyree Drive Estate which lead on to Bloomfield Road South with no direct access from the retail park.

[7] To the south, the Balloo Road from the junction with Newtownards Road runs to the NDBC waste management site.

[8] To the west of the complex, is found the dual carriageway of the Newtownards Road from the roundabout junction with South Circular Road to the roundabout junction with the Balloo and Rathgael Roads.

[9] The store is accessed from three junctions. First, off the dual carriageway South Circular Road via a recently introduced new traffic light junction with Balloo Drive. Secondly, from the dual carriageway at Newtownards Road at its junction with Balloo Avenue via a new traffic light junction. Thirdly from Balloo Road/Balloo Drive via a new traffic light junction at a left turn into Balloo Link.

Preliminary determination of vicinity in an appeal

[10] Prior to the hearing of this appeal and again at the opening of the appeal, a preliminary point was taken by Mr McCollum QC who appeared on behalf of the

respondent, that the objectors were not persons carrying on business in premises in the vicinity of the premises for which the licence is sought.

[11] In my opinion, unless there are some special and exceptional circumstances, a preliminary point fundamental to the right of a party to appear should be decided before hearing the evidence on the appeal as a whole. I consider that the view expressed by McGonigal LJ in Hunt v Tohill [1976] NI 73 sets out the principles that govern this conclusion:

> "It appears to me, while it must be a matter of discretion in each individual case, the correct procedure is for the preliminary point to be determined before the merits of the case as a whole are considered. If the preliminary point is decided against the objector there is no valid objector before the court and there is no right in the person seeking to appear to call evidence and advance arguments in support of his objection. To allow the preliminary point to stand over until the evidence had been given is to allow him to call evidence and advance arguments and, thereby, to try to influence the decision of the court even though he may have no valid standing. The legislature has defined those who may appear as objectors, and the courts should not widen the class of those persons by hearing evidence and arguments from those who do not come within the defined limits.
>
> There is another reason why such a point should be decided before the merits of the case as a whole are considered. The person who seeks to be heard as an objector can only be heard if he comes within the class of persons defined by the Act. The onus is on him to show that he is within that class and has thereby the right to appear and object. If the preliminary point is heard as a preliminary point the proposed objector will have to satisfy the court of his right, and the court will have to decide that point on such evidence as may be called bearing in the mind that the onus is on the objector. If the preliminary point is not taken as the preliminary point but is deferred until all the evidence on the merits of the case is heard, the onus on the objector to satisfy the court it was right to appear will become merged and confused with the onus on the applicant to satisfy the court on the merits of the application and, since both are

> concerned with the same test of vicinity, the applicant's position may well be prejudiced."

[12] In this instance I was persuaded on foot of skeleton arguments and oral submissions by Mr Beattie that the exceptional circumstances in this case meriting a full hearing before determining the preliminary point were that all the witnesses required to give evidence on the issue of vicinity were also required to give evidence on all the other matters. As I will shortly indicate, appeals of this nature are governed by Order 1, Rule 1A of the Rules of the Court of Judicature wherein the overriding objective is to hear cases expeditiously and fairly, avoiding undue expense, and to deal with cases proportionately having regard to the complexity and importance of the case. On the arguments put before me, it seemed that the overriding objective would not be fulfilled if witnesses were obliged to attend on separate occasions thus increasing the costs of their double attendance and the inconvenience occasioned to businessmen. It is important that courts become user friendly for the public and that wherever possible witnesses who have businesses to run are accommodated within the system in the most efficient and cost saving manner. However I emphasise that this should only occur in exceptional cases where there is evidence that such efficiencies in savings can genuinely be made by hearing all the evidence at the one time.

Case management of licensing cases and appeals

[13] I have already adverted to the overriding objectives of Order 1, Rule 1A. Courts and those appearing before them must adopt a business-like approach in dealing with litigation if resources are to be properly deployed and unnecessary expense and delay are to be avoided.

[14] Hence in all divisions of the High Court, robust case management practices are now invoked. Whilst the ultimate overriding principle is that justice must be done, that aim must be achieved within the ambit of Order 1, Rule 1A.

[15] This case extended over seven days. In the course of it I heard on each side experts on planning and road traffic views. These four experts all produced extremely lengthy expert reports which had not been shared and in circumstances where the experts had not met or discussed the issues prior to the hearing. The result was that on occasions the court had to rise to permit counsel to read the opposing expert report prior to cross-examining. I immediately recognise that such breaks of 30-40 minutes were absolutely necessary if counsel was to assimilate the dense and highly technical arguments contained within these expert reports. Indeed my only surprise was that counsel was able to assimilate such information within this time and in each instance be able to engage in expert cross-examination.

[16] Similarly, lengthy examination-in-chief occurred particularly in the road traffic survey area, when it became abundantly clear in cross-examination that many

of the figures were common and that a great deal of court time had been taken up with matters that were not seriously in dispute.

[17] Moreover by virtue of the fact that these large bundles of documents were being produced for the first time in court, the judge did not have an opportunity to read them in advance and thus listen to the evidence with an informed ear.

[18] There is no reason why licensing cases should not be subject to similar case management structures as obtained in other areas of litigation. Cases such as the present appeal take up a disproportionate amount of court time and in my view incur a level of expenditure on the part of both parties which could easily be substantially reduced.

[19] In order to meet the overriding objective, in future licensing cases, firm case management prior to the hearing should be invoked and the following steps considered:

- Expert reports, at least so far as they contain factual assertions including for example measurements, distances, surveys etc., should be exchanged not later than 14 days prior to the hearing. I am of course conscious that in an adversarial system an objector is entitled to be wary lest by his industry he unwittingly helps to make a case for the applicant. He remains entitled to put the applicant to proof of his case without assistance from the objector's expert evidence .Nonetheless this is a common problem in almost all litigation to a varying degree and the greater part of expert reports is usually confined to factual assertions which will emerge in cross-examination. At least those aspects must in future be exchanged in advance of trial to speed up litigation.

- Experts should convene meetings by telephonic communication or otherwise in order to narrow issues and draw up a Scott schedule of matters in agreement/matters in dispute.

- At least two weeks prior to trial experts should exchange any literature or statistics being relied on.

- The bundle of documents prepared for the court hearing should include the expert reports so that the court has an opportunity to read the papers in advance of the hearing and thus accelerate the court process.

- Maps, plans, statistics and drawings to be relied on should be exchanged prior to the hearing and contained in the bundle of documents presented to the court.

- Prior to the hearing the parties should exchange correspondence outlining whether or not there is any issue as to certain of the statutory proofs wherever possible egg. on the validity of the subsisting licence to be

surrendered, on planning permission granted, is the objector within the vicinity, have the requirements of service, advertisements and notices been complied with etc. Whilst of course it remains necessary for the applicant to present a number of fundamental proofs at such hearings in order to satisfy the court, nonetheless the process can be speeded up without injustice at least at the appeal stage if it is clear that there is no issue that required proofs exist and are in order.

[20] In short litigation by ambush is a relic of the past. The cards up approach to modern litigation must now find its way into licensing cases to ensure that justice is done and cases are dealt with in a timely, efficient and proportionate manner

Who Can Object

[21] Under Schedule 1 Part 1(4) of the Licensing (NI) Order 1996:

> "A sub-divisional commander upon whom notice is required by paragraph 1 to be served, the district council mentioned in that paragraph or any person owning or residing or carrying on business in, premises in the vicinity of the premises for which the licence is sought may appear at the hearing of the application and object to the grant of the licence in any ground mentioned in Article 7(4)(a) to (e)(i)."

[22] At the termination of the case and after the evidence had been completed, Mr McCollum submitted that Mr Beattie had failed to formally prove that Phillip Russell Limited owned or carried on business in the off licence within the vicinity contended namely that under the nomenclature Winemark. In short Mr McCollum contended that Mr Beattie had done no more than state from the Bar that Phillip Russell Limited owned the premises now at the relevant time, held the relevant licence and traded under the name of Winemark. He had not called a witness on behalf of his client to prove this.

[23] I am satisfied that after a party has closed its case, normally he cannot call another witness unless there are special circumstances justifying it. There must be a finality about proceedings and thus the rule is that set out by Valentine "Civil Proceedings the Supreme Court" at paragraph 13.54. For this proposition Valentine relies upon the authority of Murray v The Sheriffs of Dublin (1842) Arm Mac and OG 130 where, refusing leave to call a witness to prove that a party had due notice of dishonour of a bill of exchange, Brady, CB said:

> "I think the case had closed, but on the ground of public convenience, I cannot allow this witness to be recalled; there may be cases where such a course would be expedient, and if the point as to notice were

> the only point by which I were pressed, and the plaintiff had a strong case on the merits, it might be otherwise."

[24] A more recent authority touching on the issue included Taylor v Lawrence [2002] 2 All ER 353 where a litigant complained that after his appeal to the Court of Appeal had been dismissed information had come into his possession which showed that his appeal had been dismissed in ignorance of a material fact. Lord Woolf CJ said at paragraphs 54-57:

> "… The residual jurisdiction which we are satisfied is vested in a court of appeal to avoid real injustice in exceptional circumstances is linked to a discretion which enables the court to confine the use of that jurisdiction to the cases in which it is appropriate for it to be exercised. There is a tension between a court having a residual jurisdiction of the type to which we are here referring and the need to have finality in litigation. The ability to reopen proceedings after the ordinary appeal process has been concluded can also create injustice. There therefore needs to be a procedure which will ensure that proceedings will only be reopened when there is a real requirement for this to happen.
>
> One situation where this can occur is a situation where it is alleged, as here, that a decision is invalid because the court which made it was biased. If bias is established, there has been a breach of natural justice. The need to maintain confidence in the administration of justice makes it imperative that there should be a remedy."

[25] In Serey-Wurie v Hackney London Borough Council (No. 2) [2002] EWCA Civ. 909 the Court of Appeal (Civil Division) approved that approach albeit coming to a different decision on the facts in that case.

[26] In my view therefore the need to establish special circumstances to permit recall of a witness or the calling by one party of another witness after the case is closed, contains a strong element of the need to ensure that the interests of justice remain paramount. In this case I accept that Mr Beattie had mistakenly concluded that it would be sufficient for him to explain the ownership of the licence of the off-licence in question without calling the necessary proof in circumstances where throughout the entire case it had never been challenged that such an off-licence existed or that its whereabouts were as indicated by him during the hearing. In short he had opined that the matter was simply not in dispute. Strictly speaking

counsel should not make such an assumption without obtaining the agreement of counsel on the other side and thus Mr McCollum was perfectly entitled to raise this matter. I believe that it has emerged as a result of a genuine misunderstanding on the part of Mr Beattie and at worst amounts to a simple oversight. No blame rests with the objector itself. Hence I consider that in order to avoid a real injustice the circumstances of this case amount to exceptional circumstances which, in my discretion, I should permit to be rectified by the calling of another witness. Failure to do so in my opinion will create a real injustice arising out of a purely technical matter.

[27] I therefore exercised my discretion and permitted the witness to be recalled. I emphasise however that this is not to be interpreted as in any way devaluing the need for objectors to prove their necessary locus standi in every case in what is still an adversarial system where judges must determine cases on the evidence before them.

Vicinity

[28] The concept of vicinity is a chimera. Its definition may evolve under the impact of changing social and demographic conditions thus progressing the purpose and theme of the many authorities that deal with it.

[29] Equally, the definition of vicinity must be viewed within the context of the purpose and theme of those earlier authorities. The law must have a reassuring clarity and intellectual coherence. Otherwise loopholes of havoc will appear in the fabric of licensing law I remind myself of what Lord Nicholls said in Fairchild v. Glenhaven Funeral Services Limited [2003] 1 AC 32 at p 68:-

> "To be acceptable the law must be coherent. It must be principled. The basis upon which one case, or one type of case, is distinguished from another should be transparent and capable of identification. When a decision departs from principles normally applied, the basis for doing so must be rational and justifiable if the decision is to avoid the reproach that hard cases make bad law."

In short if there is a lack of structure in the approach to the definition of vicinity , it can result in an absence of clear channels within which fairness can be seen to operate and those seeking or opposing the grant of licences will be overwhelmed rather than enabled by the process.

[30] No useful purpose will be served by exhaustive citation of all the authorities which , as in this case , are regularly cited in licensing cases eg Magill v Bell [1972]NI 159, Hunt v Tohill [1976] NI 73, Donnelly v Regency Hotels [1985]144 etc. I consider

a more helpful approach is for me to distil some of the principles that have emerged in these and more recent cases and thus provide a convenient synthesis of the principles which have governed my approach in this case.

[31] Before doing so I compliment both senior counsel in this case for the sharp focus that they have brought to their arguments presenting as they have a narrative thickened with analysis and invested with an efficient economy of oral submission and authorities.

[32] I commence, therefore, by outlining a number of relevant criteria which have helped shape the concept of vicinity and which have stood the test of time and legal authority.

[33] Vicinity is not limited to premises immediately surrounding the proposed premises.

[34] Whilst it is impossible to lay down any general rule as to the extent of the area indicated by the word vicinity, it is limited to the premises in the neighbourhood in the sense in which one speaks of being a neighbour of another. This is not to be confused with locality. It means a physical proximity best indicated by a sense of neighbourhood. People are within a neighbourhood if they or the neighbourhood are near enough to be affected in some way if the application is granted.

[35] In arriving at a fact sensitive conclusion in any particular case, it is necessary for the court to consider the following affective tributaries that flow into any definition of vicinity:-

- The physical features of an area e.g. a river, railway, range of hills, and layout of the streets, nature, character and use of buildings.
- Any natural boundaries.
- The size and distribution of the population.
- Establish dwelling patterns.
- Geographical allegiances of those who live work or shop there.
- The habits and movements of people in the area.
- The direction in which these habits take them in the course of their daily lives.
- One test is to stand at the applicant's premises and look out to determine the neighbourhood.
- The functional relationship and mixes of uses and whether these are consistent across the vicinity.

[36] In the context of this case I make it clear that whilst usually the concept of neighbourhood embraces residential estates, there is no reason why it inevitably must do so. I see no logical reason why a shopping centre cannot constitute a neighbourhood in the same way that that concept is recognised in pharmaceutical decisions such as R v. FHSSA ex parte E Moss Limited (Boots the chemist interested party) Court of Appeal 48 BMLR 204.

[37] Equally, I see no reason why in appropriate circumstances vicinity cannot be defined by virtue of a road system network taking into account ease of movement and travel patterns

[38] In short the first step is logically to determine what licensed premises are in the vicinity of the proposed premises. One might approach that in either of two ways, by defining with more or less precision the area which one determines to be the vicinity or by looking at each of the other licensed premises near to the proposed premises and deciding if each counts as being in the vicinity of the proposed premises. I agree with the approach of Carswell J in Donnelly's case where he was inclined to the latter approach as containing the necessary flexibility and elasticity of the concept of vicinity.

The applicant's vicinity

[39] Mr Foster, a planning consultant on behalf of the applicant, argued that the vicinity of the proposed site was that bounded by on the north by the heavily trafficked South Circular Road, in the east by the residential areas of housing in Ballyree Drive estate, in the south by the Balloo Road from the junction with Newtownards Road and in the west by the dual carriageway of the Newtownards Road from the junction with South Circular Road to the roundabout junction with Balloo and Rathgael Roads. These roads all carried large volumes of traffic which Mr Foster contended provided a major obstacle to crossing them. Standing outside the objectors' premises eg in Rathgael Road there was no sense of the subject site being within its neighbourhood.

[40] In short he argued that the retail, commercial and industrial park within this vicinity—192 businesses in all – was comparable to a small town in terms of outlets and was an important sector of the town of Bangor attracting large numbers of persons into that vicinity on a regular basis as employees, shoppers and visitors. He contended that the site at Sainsbury had a weekly footfall of 23000.

[41] If this was the appropriate vicinity, then there is no question but that Mr Beattie's clients were outside the vicinity and had no locus stand to mount an objection in this case.

The objectors' vicinity

[42] Mr Shanks, a chartered town planner of over 16 years' experience with a close working knowledge of Bangor and assisted by the evidence of Mr Bradley a traffic consultant, depicted a much wider vicinity for the applicant's property which included a number of existing off licenses. He invoked the following points:-

- There were key arterial movement corridors and consistency of land use patterns using Sainsbury's as the "bull's eye" across a wide spectrum of this

area largely because he described it as a car orientated vicinity in terms of patterns of movement. He referred to the unusual characteristic of South Circular Road to the north and Balloo/Rathgael Roads to the south with Clandeboye to Gransha Road as movement corridors within that vicinity.

- He challenged Mr Foster's vicinity because it had no residents, it excluded the industrial estate to the south and it did not allow internal access from two areas (Balloo Crescent and Balloo Commercial Park) to Sainsbury's without using the main arterial routes. It was his experience that it was easier to get to Rathgael Shops than Sainsbury's in terms of travel patterns from such areas inside Balloo complex. He considered it significant that Mr Foster's vicinity did not overlap with any other vicinity in any direction and in all did not amount to conventional vicinity.

The judgment of His Honour Judge Smyth

[43] Judge Smyth visited the location, stood outside the applicant premises and asked himself "who are my neighbours". He concluded:-

> "I am convinced they do not include the, albeit relatively close, areas of residential housing on either side of the dual carriageway. I am also satisfied that the answer excludes the supermarkets at the Bloomfield roundabout. The Balloo estate is sizeable in area. Its mix of units and businesses encompassed at the Dunlop retail park, at Balloo Park and Balloo Avenue satisfy me that this is a vibrant industrial and commercial estate with many businesses attracting the general public as well as trade customers . . . No one lives in the estate but the number who work there and who resort to the businesses and services there clearly make that a destination for many people who are car borne and do not come in any significant numbers from the area of housing that are close by. Mr Foster in his evidence estimated that there were 72 retail businesses in the mixture of 180 businesses in the estate. A large village, an intermediate settlement or a small town might well have less than this in number. None of these matters determine vicinity on their own or how the neighbours test should be applied but they reinforce my view that the applicant's premises have well defined vicinity and that is in the vicinity of the Balloo estate".

Conclusions

[44] I heard evidence from Mr Foster and Mr Shanks planning consultants, Mr Laird a highway consultant and Mr Bradley a consultant transport planner and Mr Lockhart the store manager of the subject premises. I have come to precisely the same conclusion as His Honour Judge Smyth. The objectors in this case have failed to establish that they own or reside in the vicinity of the premises for which the licence is sought and thus may not object to the grant of this licence. I am of this view for the following reasons.

[45] First I must determine what licenced premises are in the vicinity of the proposed premises. I have looked at the other licensed premises near to the proposed premises and asked myself if any of these count as being in the vicinity of Sainsburys. In my opinion there are no such premises within the vicinity of Sainsburys.

[46] I am satisfied that the Balloo complex has the physical boundaries suggested by Mr Foster and set out at paragraphs 39-41 of this judgment. Having visited the area now on two occasions I am satisfied that the nature of the South Circular Road to the north, the Balloo Road to the south and the Newtownards Road to the west are clearly physical features and roads of such a nature and extent, carrying heavy volumes of traffic, that they confine the vicinity within which Sainsburys is to be found. To the east there is clear distinction between the physical nature of this complex and the Ballyree Drive Estate. Standing outside the premises and asking myself the question "who are my neighbours" the residential areas for example of the Skipperstone Road, and those abutting Rathgael Road as well Ballyree Drive are manifestly outside the neighbourhood of this complex by virtue of the physical barriers separating them. I share entirely the view of Judge Smyth that the large number of retail businesses and the remaining mixture making up the large total of premises in this complex constitute a greater concentration of shopping than found in many villages or small towns. The absence of residential premises within this complex is not a sufficiently important factor to deflect me from concluding that it operates as the vicinity for Sainsbury. This is a heavily concentrated high density retail, commercial and industrial complex which readily satisfies the criteria of a neighbourhood.

[47] I have visited Skipperstone Road together with the adjacent residential housing along the Newtownards Road in that area/Clandeboye Road, the residential housing along the Rathgael Road and the Ballyree Drive Estate complex and all the off licenses depicted on Map A. Observing the habits and movements of people within these areas, the direction of normal travel within them and the unmistakable physical barrier created at South Circular Road/Newtownards Road/Balloo Road would all have prevented anyone within those areas regarding Sainsburys as being in their neighbourhood or vicinity. I formed a clear sense of neighbourhood in much of the residential housing area to the west and north of Skipperstone Road which was in stark contrast to the sense one felt on crossing the South Circular Road south towards Sainsburys. Similarly the housing along the Rathgael Road engendered that sense of neighbourhood which was starkly ended

upon moving east to the Newtownards Road and Balloo Road. The housing in Ballyree Drive is a vibrant neighbourhood again starkly contrasting with the Balloo complex and would never be regarded as being in the same neighbourhood by those habitually moving around within that housing area. The nature of the buildings, the nature of the shopping provision the close proximity of the houses to each other all bore the hallmarks of individual neighbourhoods which contrasted with the set-up of the Balloo complex.

[48] I consider that the vicinity depicted by Mr Shanks and referred to by me in paragraph [42] of this judgment does not come within the definition of neighbourhood as envisaged in licensing cases. In so concluding I recognise that it is wrong to set any finite distance on the definition of a neighbourhood – a rural neighbourhood may have neighbours literally miles apart – and distances within a neighbourhood can be obviated by car borne traffic with the habits and movements of neighbours being conditioned by such a system. Mr Bradley the traffic consultant had assessed patterns of movement in Mr Shank's vicinity as being a maximum of 4 minutes and 15 seconds at its broadest area and indeed most travelled distances were between 2 and 3 minutes. I also consider that in certain circumstances the consistency of land use outlined by Mr Shanks across his proposed vicinity could be a relevant factor.

[49] However the spider's web of roads depicted by him is too large, too disparate and unrelated in terms of a genuine neighbourhood. I find it inconceivable that the residents across this area would ever envisage that they were all neighbours of each other. As I have earlier indicated the law requires reassuring clarity and intellectual coherence if it is to avoid loopholes of havoc in the fabric of licensing law. To take an overly optimistic Panglossian view of the concept of neighbourhood paying no attention whatsoever to the requirements of propinquity and proximity inherent in the definition of urban vicinity and the concept of urban neighbourhoods and to rely on optimistic generalisations about the nature of car borne movements over large areas with similar and consistent land uses which would be common features in many towns would be to create such havoc. Vehicular traffic may link neighbourhoods in this instance but it does not create them. Neighbours have to be sufficiently close to be affected by an application such as this. One simply cannot ignore a range of physical features which exist such as the major roads/established dwelling patterns, geographical allegiances in this area of Bangor which bound this complex. I made the journeys from the outside of Winemark on the Rathgael Road/Wineworld and Russell Cellars on the Clandeboye Road/Wineworlds on the Bloomfield Road South and Balloo Roads respectively /Bloomfield Centre and Lidl on the Bloomfield Road to Sainsbury and I had absolutely no sense of neighbourhood between Sainsbury and any of the others merely because the journey by car only took a few minutes. Standing outside each of these off-licences and applying the test of Carswell J in Donnelly's case I was unable to count any of these off licenses as being in the vicinity of Sainsbury. The fact that Sainsbury may well serve the purposes of those who live in these areas travelling by car does not mean that they are within the vicinity of Sainsbury. It did not surprise me in the slightest

that the objectors did not call any evidence to suggest there was a cross-over of trade between Winemark on the Rathgael Road(or any other off-licence mentioned in this case) or a common pool of regular customers. In truth I found it inconceivable that one could be affected by the other in the sense of one neighbourhood affecting the other. There is no sense of proximity or propinquity between one and the others in the sense of one speaks of being a neighbour of each other.

[50] I have therefore come to the conclusion that this preliminary point of whether or not Mr Beattie's clients come within the provisions of Schedule 1 Part I(4) of the Licensing (NI) Order 1996 must be determined in favour of the applicant and against the proposed objectors. In short they do not come within the provisions of that schedule. I am therefore satisfied that there is no valid objector before this court and hence there is no valid basis for this appeal being taken. The legislature has defined those who may appear as objectors and since the proposed objectors in this case do not fall within that class of persons, there is no basis for their appeal. Accordingly I consider that I should not consider any further aspect of this case and in the circumstances therefore I can affirm the decision of His Honour Judge Smyth.