

# Judicial Communications Office

3 May 2019

## COURT DELIVERS JUDGMENT ON APPLICATION FOR OCCASIONAL LICENCES

### Summary of Judgment

The Court of Appeal<sup>1</sup> today held that a judge was wrong in deciding that the licence holder for the Elk Inn in Toomebridge was not permitted to apply for an occasional licence for a function room that had previously been de-licensed.

Creagh Concrete Products Limited (“the appellant”) is the licence holder for the Elk Inn, Toomebridge. On 20 March 2018, the appellant applied for an occasional licence for an event in the function room at the Elk Inn. The function room had been de-licensed in December 2016 to allow under-age functions to take place in that part of the premises. In essence, the application for an occasional licence was an application to temporarily re-licence the room which had earlier been de-licensed and which at all times was connected to licenced premises owned by the applicant.

The District Judge (Magistrates’ Courts) refused to grant the occasional licence. On appeal, the Recorder of Londonderry (“the Recorder”) was asked to consider whether an occasional licence could be granted in respect of an unlicensed part of the building which lay within the curtilage of the licenced premises. The Recorder concluded that the definition in Article 2(3) of the Licencing (Northern Ireland) Order 1996 (“the 1996 Order”) defining “premises” means anything within the normal boundary line of the premises. The Recorder was, however, asked to state the following case for the Court of Appeal: “Was I right in law in deciding that the appellant was not permitted to apply for an occasional licence for an unlicensed part of its premises pursuant to Article 30 of the [1996 Order]”.

Article 30(1) of the 1996 Order provides that a court may grant an application by “a person who is the holder of a licence for premises to which this Article applies” for an occasional licence authorising that person to sell alcohol at such place “other than those premises”. Article 30(14) sets out that the premises to which this applies are “premises of a kind mentioned in Article 5(1)(a) of the Order” (premises in which the business carried on under the licence is the selling of intoxicating liquor by retail for consumption either in or off the premises), a hotel, or a restaurant. Article 2(2) defines licensed premises as hotel premises or 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. Article 2(3) provides that references in the Order to premises include references to their curtilages.

The appellant contended that the unlicensed function room is not part of the licensed premises for the purposes of the 1996 Order for the following reasons:

- Article 30(1) of the 1996 Order is a plainly permissive part of the licensing code and is merely explanatory of what is permitted. The appellant claimed that the purpose of the provision

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<sup>1</sup> The Court of Appeal panel was Lord Justice Deeny, Lord Justice Treacy and Sir Richard McLaughlin. Lord Justice Treacy delivered the judgment of the Court.

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permitting occasional licences is simply to permit licences to be obtained occasionally for premises other than premises that are in fact licenced. Accordingly, when the Order refers to a place, other than those premises, it is merely referring to a place that is not already licenced;

- The person who can apply for an occasional licence is the holder of a licence for the licensed premises. 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;
- 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. The appellant contended that this would be a plainly ridiculous result and contrary to a true and purposive interpretation of the legislation.

In the case stated, the Recorder said he had decided that Article 30 refers to “premises” and not “licenced premises”. He said he concluded that the legislature had inserted into the Order the word “premises” as opposed to “licensed premises” and defined both as meaning different things. Premises in his view were clearly defined as being outside the curtilage of the applicant’s property. The Recorder held that for the application to be successful, it would be necessary for the legislation to make it clear in Article 30 that holders of Article 5(1)(a) licences could have licensed parts of their premises that were not defined on the plan kept by the Clerk of Petty Sessions but this had not been done. He said it was significant that the words “licensed premises” did not appear in Article 30.

The Court of Appeal looked again at Article 30. It said that, taken as a whole, Article 30 intends to allow the three principal types of existing owners of licensed premises to sell alcohol at a place “other than those premises”. The defining qualification for the permitted applicants therefore was one of three identified kinds of licensed premises (as set out in Article 5(10(a) of the 1996 Order). The statutory scheme was therefore designed to allow these persons to seek permission to extend their licences to “other” places, ie to places other than the licensed premises with which they are associated. The Court concluded that the licensed premises from which these “other places” are to be distinguished are those as defined by Article 2(2) of the 1996 Order ie other places within the hotel premises or the other part or parts of the premises for which a licence is in force which are delineated as the part/parts of those premises in which intoxicating liquor is permitted to be sold. The Court said the answer posed in this case stated must therefore be “No”.

The Court of Appeal added that this decision did not dispose of all cases like this one. It said that while it now could be considered possible to apply for an occasional licence for an unlicensed part of a bar premises, it would remain necessary for each applicant in cases of this kind to satisfy the other requirements of Article 30, including being able to satisfy the 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 Court said this ruling deals exclusively with the point of statutory interpretation raised in the case stated and, going forward, it will be a matter for the Magistrates’ Courts to satisfy themselves that all the requirements of Article 30, as interpreted by the Court of Appeal, are fully complied with in every future case.

**ENDS**

If you have any further enquiries about this or other court related matters please contact:

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