

IN THE RECORDER'S COURT FOR LONDONDERRY

LICENSING (NORTHERN IRELAND) ORDER 1996

In the matter of an application by C.L. Catering @ Drenagh Limited

1. The application dated 6 April 2016 is for the "grant of a licence for the premises situated at 15 Downland Road Limavady being restaurant premises such as are specified in article 2 of the Licensing (NI) Order 1996, namely, premises, not being premises of a kind mentioned in article 5 (1) (a), in which there is carried on the business of selling meals or refreshments, which is structurally adapted and used for the purpose of providing persons frequenting the premises with a main table meal at midday or in the evening or both".

2. The area which is the subject of the application comprises a marquee and the walled garden in which the marquee has been erected. A series of plans of the marquee and the walled garden was lodged with the application in accordance with schedule 1 paragraph of the Licensing Order.

Statutory proofs

3. The application was advertised in the Derry Post on 12 April 2016 and in the Mid Ulster Observer on 14 April 2016 pursuant to Order 48 of the County Court Rules and in accordance with schedule 1 paragraph 1 a) of the Licensing Order. Notification of the application was served by recorded delivery dated 13 April 2016 on the Licensing Officer, Limavady Borough Council, the Police Service for Northern Ireland at Magherafelt and on the Clerk of Limavady Council pursuant to Order 48 of the County Court Rules and in accordance with schedule 1 paragraph of the Licensing Order. Mr Mc Laughlin, director of the applicant company, gave evidence that the notices to the public required under schedule 1 paragraph 1 (b) of the Licensing Order were pinned on the right hand side of the front gates from week commencing 12 April until June 2016.

4. Title to the area which is the subject of the application is described in Land Certificate Folio 11244. Drenagh Farms Limited hold title in fee simple; on 2 May 2011 Drenagh Farms Limited granted a lease for a period of 10 years to 1 May 2021 to Fruithill Estates Limited, the allowed use being the hosting of events. On 5 March 2016 there was an agreement for a lease for a period of 6 years from 1 February 2016 between Drenagh Farms Ltd and Fruithill Estates Limited, as the lessor, and CL Catering @ Drenagh Limited, as the tenant. That agreement was subject to a number of conditions, one of which is relevant to the present application. Clause 6 i) and ii) provide for the tenant to make an application for a liquor licence for the "marquee/restaurant area" and for the lease to take effect immediately on the granting of such application. Pending the latter developments the tenant occupies the area by way of licence only according to clause 5 a).

5. The walled garden is a listed building and listing building consent was granted on 1 December 2015 for the retention of existing marquee contained within existing walled garden "on a temporary basis not exceeding 10 years from the date of this decision". Planning permission was granted retrospectively on 1 December 2015.

6. Mr Mc Laughlin told the court on 3 June 2016 that he is the only shareholder in, and the sole director of the applicant company. He is a chef by profession, has trained in all aspects of catering including looking after alcohol and wine stores and has worked in licensed premises all his life. These have included managing the bar in a complex in Germany which was a restaurant and a night club and management of the restaurant in Portstewart Golf Club. He has a clear criminal record. I am satisfied that he is a fit person.

Other evidence

7. The marquee is exempt from building control by virtue of schedule 2 paragraph 9 (c) of the Building Regulations (NI) 2012. I therefore deemed it prudent to obtain a report from a qualified fire engineer to address in particular the issue of fire safety. Mr Michael Mc Glennon Associate Director Fire Engineering in the company WYG provided a report dated 1 July 2016. Mr Mc Glennon was Head of Building Control Services in North Down Borough Council from 2002-2006 and was chair of the Northern Ireland Fire Safety Council. His conclusion from his inspection was that "the marquee complies with the requirements for fire safety under Part E (fire safety) of the Building Regulations (NI) 2012". He also referred to the fact that a condition of the issue of an entertainment licence under The Miscellaneous Provisions (NI) Order 1985 was compliance with fire safety guidance under building regulations to the satisfaction of the licensing officers who are members of the district council's building control department. I understand that, while there was an Entertainments Licence in force until April 2016 a decision by the Council about the renewal of that licence has been postponed pending the outcome of this application for a restaurant licence.

8. The applicant provided a detailed analysis of the costs involved in the erection of the marquee including the works to the walled garden. The total costs incurred by Dreenagh Farms and Fruithill Estates were £13165.33 and by CL Catering were £141,069.17. A cursory review of those costs suggests that not all of them were specifically attributable to the works associated with the erection of the marquee. A few examples serve to illustrate this point - CL Catering spent £19K on a tractor including parts, paid over £6K to their solicitors in respect of the licensing application, spent almost £3.4K on an icemaker, £6K on chairs; Dreenagh Farms and Fruithill Estates spent £19.1K on repayments for the marquee. The marquee cost £44.9K.

Consideration

9. The fact that there were no objections to the application does not absolve the court from considering whether the application meets all the statutory requirements and whether it should be granted (**Magill and another v Bell** and others [1972] NI 159). To the best of my knowledge this is an application which is unprecedented in this jurisdiction and the two fundamental issues which must be addressed are

- Whether the marquee situated within the walled garden is a restaurant within the meaning of article 2 (2) of the Licensing Order and
- Whether in particular the marquee situated within the walled garden constitutes "premises".

10. A 'restaurant' is defined in art 2(2) of the Licensing Order as

11. The primary purpose of the marquee is to host wedding and similar functions; the maximum number of persons who may be accommodated in the marquee is, according to the report of Mr Mc Glennon, "approximately 320". The applicants have also indicated informally their hope in due course to offer Sunday lunch on a regular basis. I visited the marquee on two occasions and am satisfied that the meals to be served in the marquee would be eaten only by persons seated at tables. The court was provided with the range of menus available for functions and is satisfied that the meals provided in the marquee would include a main course. The meal would be provided either at midday or in the evening or both. The application therefore satisfies the statutory test of what constitutes a restaurant.

12. The more difficult question is whether the marquee constitutes premises within the meaning of the legislation and in the light of the jurisprudence. There is no definition of premises in the Licensing (NI) Order 1996. The case-law touching on the meaning of premises has developed mainly from a consideration of objections to licensing applications on grounds such as proximity to other buildings, the suitability of the neighbourhood and access.

Mc Gonigal J in **Magill and another v Bell and others** [1972] NI 159 quoted from **Marshall v Chief Justices of County Tyrone** [1895] 2 IR 174

"What then is involved in the expression premises, the subject-matter of the suitability? There is, first, the structure itself; second, the place upon which that structure is erected. The place might be unsuitable for many reasons as for instance from the nature of the approach to it..."

MacDermott LCJ in **Nichol v Recorder of Belfast** [1965] NI 7 stated

"What 'suitable' comprehends is a matter for decision on the facts of each case. But the court is not at liberty to roam as it pleases in its consideration of suitability."

13. I have found helpful an Opinion by Constance Cassidy Senior Counsel in the Republic of Ireland and author of the leading textbook on licensing in that jurisdiction which was provided by the legal representatives of the applicant. Ms Cassidy states that "The Irish Licensing Code dates back to 1635 and comprises many statutes which were enacted prior to the formation of the Irish Republic. The Code provides for the grant of intoxicating liquor in respect of 'houses' 'places' and 'premises'." She referred to **Gates v Justices of the County of Avon** [1983] 147 JP 289 which has been accepted by courts in the Republic of Ireland as a helpful authority on the meaning of premises.

14. In that case the application was for provisional grant of on-licence for a barge to be moored on the banks of a river. At first instance it was held that, while a vessel permanently moored at a fixed position might constitute premises for the purpose of the grant of a licence, a vessel which could at any moment leave its moorings and travel along the river and was intended to do so on a regular basis lacked the permanency necessary to constitute premises within the meaning of the licensing legislation. In his decision on appeal, Forbes J stated that the starting point is to look at the purposes for which the licensing legislation was passed and the mischiefs at which it was aimed, namely the control of the sale of intoxicating liquor and of the premises in which it is sold when considering what meaning to give to the word "premises" in the legislation. He concluded that there must be something of the "nature of a structure which is permanently fixed at a particular point" for the structure to be premises. The structure must be in some way considered as "integral with a particular spot". Forbes J found support for his conclusion in the Scottish case of **Cowlairs Co-operative Society Ltd. v. Glasgow Corporation** [1957] S.L.T. 288. in which it was held that a mobile shop which was towed to a plot of vacant ground each day by a mechanical power unit and which was opened for retail trade between 8 and 17 hours five days weekly did not constitute 'premises where any retail trade or business is carried on' within the meaning of the shops legislation. In the leading judgment of the court Lord Thompson stated "You must have premises of

some sort - that is the starting off point of carrying on your trade. I do not see how under any interpretation of the facts this van can be regarded as premises. It is mobile, or it is potentially mobile, and while it may be here today it is uncertain whether it will really be back tomorrow. This mobility or potential mobility seems to me to be inconsistent with the underlying idea of structure of fixity to a permanent site which is carried by the notion of premises".

15. The marquee which I am considering has a floor area of 580 metres squared. Mr Bell, the architect who prepared the plans, told the court that the marquee is a "semi-permanent structure" and he is not aware of a similar example elsewhere in Northern Ireland. Normally a marquee is set on grass and is a temporary facility; the subject marquee is a proper structure with concrete foundations which were specially developed. In his view the subject marquee could easily last for 25 years. Mr Mc Glennon described the subject marquee as "a reinforced PVC structure, typical of temporary structures of this nature. The WC accommodation and storage area off the bar are of more robust and permanent construction and a wooden shed adjoining the marquee accommodates the electrical distribution board and stored hot water for the WCs. The kitchen facilities are provided within a moveable kitchen area and an outside smoking area is provided". From my two visits to the site I would describe the marquee as a PVC structure with a frame of approximately 40 steel pillars some of which are inserted permanently into a concrete base and some of which appear to be bolted on to that base. There is a damp proof membrane between the concrete and a suspended plywood floor. The kitchen, which has been passed as complying with Health and Hygiene requirements, has a metal floor; there are permanently fixed grease traps and the dishwasher is plumbed in. The toilets are fixed to the concrete base and sewage is disposed of through a septic tank. There is mains running water. There is a mains electricity supply. The gas supply is from a trailer. It took a week to erect the marquee.

16. I have referred in paragraph 8 to the analysis of costs provided at the request of the court by the applicant. It is difficult to ascertain from that analysis what were the costs of creating the permanency which is the key consideration. Many of the costs outlined in the analysis, including the cost of the marquee itself, were attributable to the marquee even if it were erected on a temporary site. If the applicants were catering for functions in the marquee on a temporary site they would have to purchase or hire items such as glasses, cutlery, crockery, tables and chairs. The analysis does, however, demonstrate that there has been expenditure – for example on the concrete base, on the electrical installation, on the septic tank – which has created the element of permanence.

17. I am satisfied that the marquee attached to the walled garden, particularly because it is attached to a concrete base, is served by mains electricity and by a septic tank, has sufficient permanency to constitute premises for the purposes of art 2(2) of the Licensing (NI) Order 1996. I make it clear that it is not this marquee which constitutes such premises but rather this marquee with the permanency I have identified in to the walled garden. If the marquee were to be removed from the walled garden it would no longer constitute premises; if a different structure, whether a marquee or other structure, were to be erected on the walled garden it would not constitute premises unless a court so decided.

18. I therefore grant the application for a restaurant licence for the marquee and walled garden, subject to one condition. The expert report on fire issues referred to the need to keep combustible

materials away from the marquee externally. Before the licence issues the court must be satisfied that there is provision to ensure that this precaution has been taken.