

MORMUR

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THE HIGH COURT

IN THE MATTER OF THE LICENSING ACTS 1833 to 1931
AND IN THE MATTER OF THE COURTS (SUPPLEMENTAL PROVISIONS)
ACT 1961
AND IN THE MATTER OF SECTIONS 13 and 15 OF THE INTOXICATING
LIQUOR ACT 1960
AND IN THE MATTER OF AN APPLICATION OF MORMUR LIMITED



Judgment of Mr. Justice McMahon delivered the 1st February 1984

The applicant applied to the Dublin Circuit Court for a declaration under section 15 of the Intoxicating Liquor Act 1960 that certain premises which the applicant proposed to construct at Woodlawn Park Estate off the Firhouse Road in the Civil Parish of Tallaght and County of Dublin would be fit and convenient to be licensed as a public house for the sale of intoxicating liquors if constructed in accordance with the plans accompanying the application and on the site shown thereon. For the application to succeed it was necessary for the applicant to satisfy the Court that the applicant would be entitled to obtain a licence for the new premises under Section 13 of the Intoxicating Liquor Act 1960 as amended by Section 20 of the Intoxicating Liquor Act 1962.

Section 20 (2) (a) of the Intoxicating Liquor Act 1962 provides:-

"An application to the Circuit Court under Section 13 of the Act of 1960 shall not be allowed in respect of premises situate less than 1 mile measured by the shortest public

thoroughfare from premises in respect of which there is in force a licence that was first granted on or before the 4th day of July 1960 and is of the same character as the licence that would fall to be granted if the application were allowed".

The only objection taken to the application was by the Superintendent of the Garda Siochana on the grounds that the new premises would be situate less than 1 mile measured by the shortest public thoroughfare from another premises Delaney's public house which was admittedly the nearest public house with a licence granted on or before the 4th of July 1960. The Circuit Court judge upheld the objection and the question whether he was right in doing so is the only issue in this appeal.

The distance of the new premises from Delaney's public house by public road is a few yards more than a mile. There are two ways of getting from Delaney's to the new premises by departing from the public road and the issue before me is whether either of these ways is a public thoroughfare within Section 20 (2) (a) of the Act of 1962.

The site of the new premises adjoins a Tesco supermarket and

the design of the new premises provides for entry by a right of way over the car park attached to the supermarket. The right of way has been acquired by the applicant from the supermarket owners. It is possible to shorten the distance from Delaney's to the new premises to a few yards less than a mile by taking a short-cut across the supermarket car park instead of using the right of way to the designed entrance. It is contended by the Superintendent of the Garda Siochana that this approach to the premises is a public thoroughfare.

I am satisfied for two reasons that persons passing over the car park to the new premises would not be using a public thoroughfare. In the first place as the new premises is not yet in existence the public is not passing that way and I have no evidence that the owners of the supermarket would permit the car park to be used by the public for any purpose other than a car park for customers of the supermarket.

Secondly I am satisfied that the car park is not a thoroughfare. It is not possible to pass through the car park to any other place. A thoroughfare must be a passage or way through. The concise Oxford dictionary (6th Edition) defines thoroughfare as:-

"A road or street or path open at both ends especially one through which much traffic passes".

The other way from Delaney's which also measures a few yards short of a mile involves leaving Firhouse Road and taking a short cut through a new housing estate named Woodlawn Park and over a pathway between the site of the new premises and an adjoining petrol filling station and over part of the Tesco car park outside the applicant's right of way. The footpath is part of the supermarket property and is provided by Tesco for pedestrian access to the car park and thence to the supermarket. It is not a thoroughfare because it is part of the supermarket property and does not provide a way to any other place. This way has a further defect as a public thoroughfare. In passing through Woodlawn Park it involves passing over unbuilt on ground not laid out by the estate developers as a road or passage. This ground separates the ends of two cul-de-sac roads on the estate and over it there are signs of a pathway having been worn and some rough concrete paving has been placed on parts of it. There was no evidence to show who used this path but the applicant's architect believed it was used by residents of one of the cul-de-sacs as a short-cut to a bus stop on

Firhouse Road. There was no evidence of public user of this path and I doubt if such user as may have occurred by the residents was sufficient to justify calling it a thoroughfare.

It is not necessary for the purpose of this decision to decide whether public thoroughfare in the Act of 1962 means a way which the public use in fact or is confined to a way which the public has a positive right to use. I am satisfied that neither of the two ways suggested by the Superintendent of the Garda Siochana is a public thoroughfare within the meaning of the Act and the applicant is entitled to the declaration sought.

Approved
J.M.M.
9/2/84

Authorities cited. Halsbury's Laws of England (Third Edition)

Volume 19 page 13 "Highways".

Stroud Judicial Dictionary Volume 5 (Fourth Edition) page 2768 "Thoroughfare".

Oxford English Dictionary Volume 9 2

"Thoroughfare".