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Licensing (Northern Ireland) Order 1996, Article 44, Schedule 9; application for additional permitted hours; time-limits for both application and objections; whether the tests set out in Art. 44(3) are to be considered strictly by reference to the present applicant and not any imminent purchaser of the business; whether the test set out in Art. 44(b) is limited to what a proprietor of the business can do to obviate inconvenience to persons living in the vicinity of the premises; whether it is relevant that some resident may have bought their homes with putative knowledge of inconvenience.

IN THE MATTER OF AN APPLICATION FOR AN ORDER FOR ADDITIONAL PERMITTED HOURS Hewitt Bros. (Lurgan) Ltd. Applicant G B Murray Superintendent Objector	Petty Sessions District of Lisburn County Court Division of Craigavon

Licensing (Northern Ireland) Order 1996, Article 44, Schedule 9

This is an application by the current licence holder for an order under Article 44 of the 1996 Order, permitting additional hours for the sale of intoxicating liquor, ancillary to the provision of entertainment and/or substantial refreshment.

The Application under Form 16 of the Magistrates' Courts Rules, dated 14th August 2002, sought the additional hours, from 11.00 pm to 1.00 am the following morning, on all seven days of the week, except to the extent that the extension sought was to only midnight on Holy Thursday, Easter Saturday and Christmas Eve, and, so far as Sundays were concerned, from 10.00 pm to midnight.

One ought to mention that the annual Application for Renewal of the liquor licence, dated 31st July 2002 had been accompanied by an earlier version of this Application for additional permitted hours, where the extended hours had been sought only for Thursdays, Fridays and Saturdays and was deemed superceded by the version upon which I was asked to rule.

The Application for Renewal itself had been dealt with by me some weeks previously, perhaps on 23rd September. If I remember correctly, it was initially sought to adjourn both Applications for a week, whereupon the Police Inspector rose to point out that there was no difficulty about the Application for Renewal

itself, but that there were several Objectors in respect of permitted additional hours. It being established that all paperwork was in order, I then granted the renewal of the liquor licence and adjourned the additional hours application alone. It was ultimately listed before me on 22nd November.

Article 5(1)(a) of the Licensing (Northern Ireland) Order 1996 defines pub premises as follows;

> 5- (1) Without prejudice to Article 80, the premises in which the sale of intoxicating liquor is authorised by a licence shall be premises of one of the following kinds—
>
> > (a) premises in which the business carried on under the licence is the business of selling intoxicating liquor by retail for consumption either in or off the premises.

Article 80 concerns non-seagoing vessels.

This Application for additional permitted hours is brought under Article 44, the relevant portions of which provide:-

Orders for additional permitted hours

44. —

> (1) Subject to Article 17(3), where part or parts of premises, which are or 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) …….. ,or
> >
> > (b) a court of summary jurisdiction, at any time, upon the application of the holder of the licence for those premises made in compliance with the procedure set out in Schedule 9,
>
> may make an order under this paragraph.
>
> (2) 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 31st December, from 10 in the evening to 12 in the evening, and

(c) on Sunday, being 31st 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.

(3) A court shall not make an order under paragraph (1) unless it is satisfied that—

(a) the business will be conducted during the hours mentioned in paragraph (2) and any period immediately following their termination in such a manner as not to cause undue inconvenience to persons residing in the vicinity of the premises; and

(b) the hours mentioned in paragraph (2) will not cause undue inconvenience to persons residing in the vicinity of the premises.

(4) …..

(5) …..

(6) Nothing in this Article shall permit an order under paragraph (1) to authorise the sale of intoxicating liquor—

(a) on Christmas Day, Easter Day or Good Friday, or

(b) to a person admitted to the premises—

(i) less than 30 minutes before the end of the hours mentioned in paragraph (2), or

(ii) where the provision of entertainment or substantial refreshment or both entertainment and substantial refreshment is due to cease before the end of those

hours, less than 30 minutes before that cessation.

(7) Nothing in paragraph (2) shall require the provision of substantial refreshment during the 30 minutes before the end of the hours mentioned in that paragraph.

(8) In this Article "entertainment " does not include any form of entertainment given otherwise than by persons actually present and performing.

(9) No part of any premises shall be treated for the purposes of this Article as used, or intended to be used, for the purpose of habitually providing entertainment or substantial refreshment or both entertainment and substantial refreshment unless it is used, or intended to be used, for the purpose of providing such entertainment or refreshment during the hours mentioned in paragraph (2) and for a substantial period preceding the end of the general permitted hours mentioned in Article 42(1) on every day or on particular days in every week, any break for a period or periods not exceeding 2 weeks in any 3 successive months, or on any special occasion, or by reason of any emergency being disregarded.

(10) The premises to which this Article applies are—

(a) …..

(b) …..

(c) ……

(d) ……

(e) any part of premises of a kind mentioned in Article 5(1)(a) which, in the case of a part specified in an order under paragraph (1) where substantial refreshment is to be habitually provided, are structurally adapted and used, or intended to be used, for the purpose of providing persons frequenting the premises with a main table meal at midday or in the evening, or both.

Article 44(1)(b), as can be seen, requires the holder of a licence to make his Application in accordance with the procedure set out in Schedule 9. The relevant provisions found there are as follows:-

SCHEDULE 9

Articles 43, 44, 48, 59, 85

APPLICATIONS UNDER ARTICLE 43, 44, 48 OR 59

1. In this Schedule "application " means an application under Article 43,44, 48 or 59.

2. A person who intends to make an application shall, not less than 3 weeks before the time of the court sitting at which the application is to be made, serve notice of the application upon the clerk of petty sessions and at the same time serve a copy of the notice upon—

(a) the sub-divisional commander of the police sub-division in which the premises to which the application relates are situated; and

(b) the district council for the district in which the premises to which the application relates are situated.

3. The notice mentioned in paragraph 2 shall specify the kind of premises to which the application relates and shall be in such form and shall contain such information as may be prescribed by magistrates' courts rules.

4. The sub-divisional commander mentioned in paragraph 2(a), the district council mentioned in paragraph 2(b) or any person owning or residing in premises in the vicinity of the premises to which the application relates may appear at the hearing of the application and object to the court making an order or, as the case may be, the grant of the certificate—

(a) …….;

(b) in the case of an application under Article 44, on any ground mentioned in Article 44(1) and (3);

(c) ……..;

(d) ……

5. A person intending to object under paragraph 4 shall, not less than 1 week before the time of the court sitting at which the application is to be made,—

(a) serve upon the applicant notice of his intention to object, briefly stating his grounds for so doing; and

(b) serve a copy of the notice upon the clerk of petty sessions.

6. The court may consider the application notwithstanding that the procedure set out in this Schedule has not been complied with if, having regard to the circumstances, it is reasonable to do so.

As regards that last-quoted paragraph, it must be emphasised that the court is empowered to hear an *application* which does not conform to Schedule 9 procedures, but not an *objection* which fails to so conform. Thus, in this case, although it had been previously intimated that there were several objectors, only one, the police, had conformed to the requisite procedure and only the objection lodged by the police can lawfully be considered by me. On the other hand, Mr. McCollum,Q.C. on behalf of the applicant, helpfully confirmed in this instance that he had no objection to the police calling several of the local residents – persons who would otherwise be recognised as objectors in their own right - as witnesses in support of the police case.

Mr. McCollum began his presentation by drawing my attention to the fact that the second Application dated 14th August 2002, had not been filed and served 3 weeks before 2nd September, the return date. He described the second one as asking for extended hours on 6 days, as compared to 3 days on the initial form of Application. In fact, the second seeks extended hours for all 7 days of the week. Anyway, whether one regards the second as superceding the first, or goes through a process of amending the first to, in effect, convert it into the second, does not really matter. The leave required of the court has to be based, either way, on a view that it is reasonable to do so and I prefer to allow in the second Application, finding it reasonable to relieve the applicant of the 3 weeks notice requirement in that respect. The police Objection is dated 23rd August and follows service of the second version of the Application. The stated ground of objection is wide enough to cover extended hours on any day of the week, so I see no prejudice involved. Likewise, to adopt the Inspector's line of reasoning, I see no point in causing everyone to return to court another time in order to determine what would inevitably be a supplementary Application for the "lost" days, should one confine this adjudication to just the 3 days cited on the Application of 31st July. I simply note in passing, though, that it was never explained to me whether the move to seek a "blanket" extension to the permitted hours, for the entire week was to correct an oversight in the drafting of the initial papers, or a reconsideration of the applicant's position in the fortnight which passed between the two forms of Application.

For their part, the police, in the person of the Superintendent for Lisburn, had served Notice of Intention to Object which stated such objection to be;

> "The business and any period immediately following the termination of the hours of business will not be conducted in such a manner as not to cause undue inconvenience to persons residing in the vicinity of the premises and the hours mentioned will cause undue inconvenience to persons residing in the vicinity of the premises."

In other words, in its own way, intimating that the court cannot be satisfied of the two essentials set out in Article 44(3).

The proper interpretation of that statutory provision was the subject of some discussion, so I should make my interpretation clear. Under Article 44(3)(a), the court must be satisfied that the *business* will be conducted during any such extended hours in a manner which does not cause undue inconvenience. That is a matter in respect of which the licence holder has a particular degree of direct managerial control. Article 44(3)(b), on the other hand, is designed to cover a situation where, though the licence holder conduct the business with complete consideration for local residents during the extended hours, patrons leaving the establishment, or patrons who remain in the locality for a time after leaving the licensed premises, and entirely beyond the direct or managerial control of the licence holder, are likely to cause undue inconvenience to local residents. Before granting any extended hours, the court has to be satisfied not only that the licence holder will honour his responsibilities and show due consideration in respect of the locals; it must also be satisfied that the patrons of such premises will do likewise, upon their departure. In each respect, the court must be so satisfied to the civil standard, the balance of probabilities.

Mr. Ralph Hewitt, effectively Mr. Hewitt Bros. (Lurgan) Ltd., began his substantive evidence by making clear that he did not propose to be the licence holder for much longer. He had been in the licence trade for 20 years and his true premises have been the Castlepark Inn, Lurgan, where his mother lives above. From 1990 up to recently, it was his brother Karl who ran the Chestnut Lodge, but he had retired from the business in June/July 2001. Since then, Mr. Hewitt had been trying to lease or sell the Chestnut Lodge. It had been on the market since September 2001. There had been a number of parties interested, but only Mr. Denis Orr showed real commitment to buying it. Mr. Orr had long involvement in the trade, with a pub in Armagh these past 15 years. He had also been running Chestnut Lodge directly for the past 4 weeks, 7 days a week, providing meals to the patrons.

Mr. Orr had initially been looking to lease the Lodge, but Mr. Hewitt's financiers insist on a sale. Mr. Orr had only been able to make a formal offer to purchase, once he had sold the Armagh

enterprise. There was no formal Contract, but one was sitting in his solicitor's office. If the additional permitted hours were granted, he would be very confident that the Contract would be signed.

An Entertainment Licence had been granted last Monday night by Lisburn City Council for a trial period of 3 months, by way of renewal.

He had had meetings with the residents 3 or 4 years ago about the noise and the behaviour of patrons. In the whole time, he could not remember ever having to call the police because of unruly patrons [on the premises]. He had also liaised with the Council about residents' concerns about noise levels. He had engaged consultants about that and had carried out their recommendations. At that time, a disco was being run on Friday nights.

The premises were destroyed in 1995 and were re-opened around the end of 1996. Through 1997 and 1998 there were active issues with Lisburn Borough Council about the noise levels.

There was a train station a couple of hundred yards away. The railway tracks ran behind some of the houses. He remembered consultants finding at the doors of some residents that the noise from the trains exceeded that from the disco.

There were also complaints about anti-social behaviour and indecency from some of the patrons. At the residents' meetings, the main problem was about disturbances while the premises were being vacated. A doorman was employed for an extra hour to police the car park. Disco music, of course, attracts the younger crowd, who are harder to manage. There had been no entertainment running since Mr. Orr took over the place. Prior to that, the entertainment ceased around June or July 2001.

Under cross-examination from the Inspector, Mr. Hewitt testified that the intended Contract was subject to the obtaining of both an Entertainment Licence and an Article 44 (as he termed it). His enterprise had had 3 days of additional hours. He was not aware whether Mr. Orr was prepared to proceed only with 3 days or with 6 days of additional hours.

In the dealings with Lisburn Council he had sealed the external doors, sealed the fire exit doors, had waste bins raised off the floor, had a noise limiter installed and instructed staff to keep internal doors closed. A burger stand was also removed from outside. It was true that a young man was killed coming out of the premises at a late hour, some time ago. The police would have attended at the premises once every couple of months. The premises were closed in December 2001.

Mr. Denis Orr gave evidence of his experience, as above, and explained that he had been negotiating for some time, first to lease, then, once he had sold the Armagh premises, to buy. Armagh was similar, but smaller. It was a pub with live entertainment and with additional hours for 6 nights. The trade is on the weekend. The entertainment is at the weekend. During weekdays, he would use the additional hours to offer accomodation to private functions.

Food was the all-important factor; people just do not come in for drink these days. He was buying the premises and the licence. The premises were designed for food and entertainment, weekly. Without those, you could not operate. And the business could not be sustained if asking people to leave at 11.00 pm.

The finance for the deal is agreed, subject to an Entertainment Licence and Article 44 being granted. He was free to agree to run the business for the past 4 weeks. It was primarily a food operation, attracting people in the 30 to 40 age bracket. It was one and a half miles from any major area and primarily for those who arrive by car.

At weekends, he would intend to lay on Country music on Friday nights, which would be for an older group. It would not be financially viable to put on entertainment on the weekdays, but if someone approached, the idea was that he would be able to lay on a function. It was similar to the Armagh arrangement.

Over the last 5 years, the public had become much more unruly. Doormen are essential. Armagh had to be run 7 days per week.

He would not intend to run discos. Other places might get promoted purely as discos – Judge Jules or the like, with drugs featuring, on and off; it happens all over the province. All his advisors had told him not to go that way, but towards Country.

Craigavon District Council runs a certificate course for doormen. He did his examination last week and fully expects to pass. He would intend to use only doormen with similar certification.

The Contracts are under consideration and he was going to buy, if he got this Application.

He was aware of the objections. He contacted the police. He met the residents at the Chestnut Lodge in September. The complaints were all about the time when young people were attending the disco there. He tried to assure the objectors that Friday evenings would be an older Country and Western set; Saturday would be a younger crowd, but over 21, featuring more popular music – [rock and pop, as I understand] and he would be taking every possible step to ensure good order.

He had also been trying to adjust the premises to take account of the objectors. The exit, for example, would be on the side door, facing Airport Road. There were no houses facing that way.

Under cross-examination, he said that Thursday, Friday and Saturday were not sufficient, so far as his financiers were concerned. He wanted to be able to advertise that he could accommodate (private) parties. The alternative process, of seeking an occasional licence for extra hours was too inhibiting; he had to comply with time constraints and to getting permission from the police and the council. Weekday evening events would be quite frequent around Christmas and summer holidays. There were a number of places around which also offered weekday evening entertainment.

The Council had now issued a probationary 3-month entertainment licence, which was quite customary in the case of a new proprietor.

The Police Inspector opened his case by advising the court that the police would have no objection to Mr. Orr being the licensee. They were satisfied that Mr. Orr would be on the site full time and, if there were problems, would be in a better position to resolve matters. On the other hand, they would object to Mr. Hewitt being the licensee. In this regard, the Application was not by Mr. Orr, but [effectively] by Mr. Hewitt. The court, he submitted, had to pass judgment upon the Application as framed.

I must say that I found the Inspector's submission a little peculiar. As mentioned at the outset, there had been an application for the renewal of the liquor licence by Hewitt Bros. (Lurgan) Ltd. before me just a matter of weeks previously. The police had written to the Clerk of Petty Sessions, not once but twice, on 30th July and 22nd August, to state that they had no objection to that renewal. The Inspector of the day had again informed the court that there was no police objection and, thereby, ensured that the renewal was granted as a routine, as I expect to have been the case for these many years.[1]

I understood the Inspector to be contending that the court had to pay strict regard to the identity of the named applicant and to assess all relevant issues on the hypothesis that the applicant would remain the licence holder indefinitely, no matter what evidence in that respect was adduced. I must disagree. Article 44(1) requires that the application must be made by "the holder of the licence". There is no provision for a prospective purchaser to apply. Article 44(3)(a), in contrast, does not mention the licence holder at all, nor ascribe directly any obligation to that individual, as such. It speaks merely of how "the business will be conducted". That certainly allows the court to take account, on evidence adduced before it, of who will really be conducting the business, to whom the court is really looking, to consider whether "the business" would be conducted in a responsible, orderly and considerate manner during such extended hours. And it is entirely right that it should do so.

If, somehow, some ostensibly respectable gentleman, albeit known to be a gullible front man for organized crime, one who never crossed the door of the licensed premises after dark, appeared before the court as licence holder, seeking extended hours, and the police knew that he was merely there to provide a gloss of respectability; if they knew the business was actually run by a mob, who could be relied upon to conduct business in an entirely unruly manner, I doubt very much

[1] It had not even been mentioned to the court that there had been no business carried on throughout the greater part of the previous renewal period.

that an Inspector would urge me to consider the application only on the basis that the named licence holder would be the person conducting the business.

The first witness called on behalf of the Objector was a Sergeant Allen. He had been a sergeant in Moira between 1998 and 2001 and could confirm that the premises at Chestnut Lodge had been trouble on Disco nights. It had required between 6 and 12 officers to patrol the area between the railway station and the nightclub, purely as a preventative measure, to try to eliminate the rowdy, unacceptable and disorderly Friday night teenage disco-goers. The exercise virtually broke the overtime budget. There were 4 trains from Belfast and Lurgan, with between 20 and 30 youths getting off each. The police seized any alcohol and destroyed it. The behaviour of the youths was appalling. There was jay walking, walking through gardens, throwing bottles in gardens. On top of that, coaches would come in from Lurgan.

There was never any alcohol consumed on the premises. People did their drinking beforehand. On leaving, some would be able to find the drink which they had stashed, in hedges or the like, on the way over.

There would be a much greater problem now, should such behaviour re-occur. Health and Safety requirements meant that police officers would not answer calls to attend disorderly crowds unless the police expected to out-number the offenders.

There had been many complaints about the noise level. Mr. Hewitt did try marshalling taxis and he did get a hot dog stand removed.

Between 1998 and 2001, that was. Then it changed to an older crowd, though the noise level of people leaving was still quite substantial.

There were public order offences, criminal injury claims from assaults, moving vehicle accidents in the car park, criminal damage claims in respect of dwellings – all regarding the teenage era.

There were no problems since June/July 2001 – it was not functioning as licensed premises since then.

The police just cannot resource people to deal with any public order offences which arise from the reintroduction of entertainment on the premises.

Under cross-examination, the sergeant agreed that the teenage behaviour was not affected by anything done on the premises. The quality of behaviour is related to the calibre of clientele and their degree of intoxication. Challenged, he could cite only one criminal injury claim arising from events on the premises themselves. Even then, that had turned into a criminal investigation; the security cameras captured footage of the woman, who claimed to have been punched, cracking a tooth by trying to bite the cap off a beer bottle.

Mr. Gregg Hughes was the first of the local resident to give evidence on behalf of the Objector. He had lived at 4a Station Road, about 80 yards from the front of Chestnut Lodge, since 1987. The Chestnut Lodge had been upgraded substantially after a fire in the mid-90's. There was entertainment on Friday and Saturday nights, later a teenage disco. It had been very unpleasant, having to put up with the bottles and with youths urinating on his property. The teenagers were not the worst. There was either a disco or a rock band. Those older people, on coming out were causing more disturbance, which woke and unsettled his children. The teenage discos ran from 7.00 pm to 10.00 pm. The events for the older set ran until up to 2.30 am. His fencing was damaged. There was littering. On Sunday mornings, he had to gather up the disgarded bottles from his garden. Mr. Hewitt contributed to the cost of him installing a thorn hedgerow at the perimeter of his land. He had garden furniture stolen. People were coming into the garden. Bottles were lobbed and smashed. He could hear the entertainment itself, but it was not overly loud. The place closed in September 2001, having wound down to a 3- or 4-day operation. There had been no problems these past weeks, since it re-opened, but it only stayed open to around 11.00 pm. In cross-examination, he advised that there were 10 or 12 houses in the vicinity of Chestnut Lodge.

Ms. Rosemary Gilbert, at No. 4, had lived about 200 yards from the "nightclub" for the last 6 years. The noise was mainly when people were leaving the premises at the end of the evening, from cars in particular. She would be awoken. It's an irregular noise – cars screetching, people screaming and shouting. She had moved her bedroom to the back of her house, the 2 kids to the front. The noise would last from 1.00 am or 1.30 am to around 2.30 am. The teenage discos were a problem. She was not sure whether that was a Friday or Saturday night. It was probably one night per week, two when the business had been going well. In cross-examination, she explained that she had moved into the area in 1996. She had married a lifelong local farmer who had been living there. They had a daughter of 4 and a son of 2.

The Reverend Howard Gilpin followed. He was a relatively recent arrival to the Presbyterian Manse, situated some 30 yards from Chestnut Lodge. He had not experienced the problems directly, but was aware from a number of locals of the problems in the past. He was as certain as he could be that a grant of additional permitted hours would cause disturbance to the local residents once again. He was able to tell me that the Manse was a house built in 1917, converted to a Manse in 1952. By agreement, he introduced a letter from his immediate predeceasor at the Manse,, the Reverend Joseph F Crawford and his wife, Mrs. Averil Crawford. (As is the way, the Reverend signed first, but the text was obviously composed by his wife). They had lived in the Manse for 20 years, up to 2000. What had originally been a small country pub with music at the weekends and minimal disruption had evolved in stages to "… one of the biggest nightclubs in the North of Ireland". Over the last number of years, its clients became a major problem, a source of distress and fear for the family. The noise was evidently their most intrusive problem; "The noise of the music tended to get louder after 11.30 pm until, at times, the very floor was vibrating, even on the far side of the house where the study was….The owners made great efforts and spent, I believe, a lot of money to deal with this problem which was caused by sound waves travelling through the ground! They also put notices up and had people supervising the car parks towards the end, but it really had little effect. Cars and bikes came and went and many times raced up Station Road at high speeds in the early hours of the morning." There were public order problems as well. "Again

the noise of the crowds leaving the place early on Sunday morning was unbelievable. I remember one night in particular when they stood at the roadside and sang all kinds of rugby songs, party songs, rude songs from 1.15 until at least 3.30 am. I called the police twice that night before it was dealt with, but the two young officers told us afterwards that they were too scared to act the first time because the crowd was so big and so aggressive…. There were the break ins, the police stake outs, callers at the door, the fights in the road which reached our house … We supported the residents' campaign when we lived in Moira and we support this renewed campaign. The middle of a group of private family homes is no place for such an establishment. It is simply not safe for families to live so close to it."

I hope I have set out enough from the detailed evidence taken to reflect a fair account of the kind of things which have caused the local residents to adopt a view that there should be no additional permitted hours afforded to the licence holder of the Chestnut Lodge. Thus, I hope I may be permitted here merely to refer in passing to the fact that Ms. Alison Davies, of 19 Chestnut Hill Road (100 metres away), Mr. Andrew Gilbert, and Mrs. Wendy Hamilton of 1a Station Road (she living a mile away and near the town centre) also gave evidence to much the same effect, the last mentioned's case being that rowdy crowds passing her house seemed, to her, to ebb away after Chestnut Lodge closed, even though other licensed premises, the Four Trees, were actually closer to her and also had a late licence.

The final witness called by the Objector was Mr. Maurice Woods, Head of the Environmental Health Service of Lisburn City Council. He had been dealing with the premises since the early 80's, since the entertainment licences became much bigger. Following a fire, the premises were rebuilt and a disco or nightclub established. The complaints really began after that. The residents have been making a number of complaints, mainly about noise. Renewal applications were dealt with very carefully, in consequence. Mr. Hewitt co-operated very well, but there were still noise problems up to closure. The Council had not responded to the noise breaches properly. A rota was set up to monitor noise and problems were also observed in the car park. There were a lot of problems arising from the design and construction of the extension (for which planning permission and building control approval would have been obtained). Some bands circumvented the noise limiter. The 3-month grant of entertainment licence was by way of probationary measure, to apply some pressure. The Council was really only concerned with the noise issue and there might well be difficulties if it should use it jurisdiction to address such matters as public order outside the premises.

Before moving on to set out what I made of the evidence, I would like to record here that I found a consistent and notable level of honesty on the part of every witness who appeared in this case.

I find that the erection of a major extension at the premises in the mid-90's and the launch of late-night entertainment on Friday and Saturday nights brought considerable difficulties in its wake for persons residing in the vicinity of the premises. There were significant problems with regard to noise emanating from the premises during live musical performances. However, the licence holder did address

these in all ways required by Lisburn Borough Council, with regard to the entertainment licence. He hired consultants and complied with their recommendations. So far as noise was concerned, however, and so far as the conduct of the business was concerned, I find the overall thrust of the evidence, including the evidence of residents before me, to be that the situation in those respects did not occasion undue inconvenience to persons living in the vicinity. I give some weight to the fact that no challenge was ever brought in respect of continuance of the additional permitted hours and the Lisburn Borough Council likewise granted annual renewal of the entertainment licence after investigating and taking account of complaints from local residents. Such absence of formal challenges may be indicative of a level of accommodation by local residents, but, on the other hand, the cost and potential complexity of mounting such challenges may also have been a deterrence for local people.

I also approach the issues upon the basis that, if the business is going to extend its hours and re-introduce late night entertainment it will only be upon a transfer of such business to Mr. Orr. With regard to the conduct of the business, he has the confidence of the police as a responsible proprietor and one who would be attentive to any emergent issues.

With regard to the application for additional permitted hours for the sale of intoxicating liquor, Article 44(3) requires that I be satisfied of two things.

The first is that "the business will be conducted during such extended hours and any period immediately following their termination in such a manner as not to cause undue inconvenience to persons residing in the vicinity of the premises."

I find myself satisfied in that respect. I only have to add that, in being required to be satisfied that undue inconvenience will not be caused to "persons residing in the vicinity" I take that to mean the body of persons residing in the vicinity. In particular, while I would fear that the residents of The Manse, situated just 30 yards from the Chestnut Lodge, will suffer particular disturbance from such noise level as is inherent in running late night live music on the premises, the distinctive plight of one individual dwelling is not sufficient to defeat an application, with regard to the terms of Article 44(3)(a). I am satisfied that the persons residing in the vicinity as a whole will not be unduly disturbed.

The second is that such extended hours will not cause undue inconvenience to persons residing in the vicinity of the premises. This is a test quite distinct from the first. It has, in essence, nothing to do with how the business might be conducted. I interpret it as having been inserted precisely in order to widen the relevant enquiry beyond the more narrow issue as to how the licence holder might conduct the business itself and as to whether he might be relied upon both to control the level of disturbance to neighbours while the entertainment is in hand and as patrons leave

the premises themselves. Reference to the period "immediately following their termination" in Article 44(3)(a) is capable of being construed narrowly, and in the context of the words immediately preceding, so as to render the applicant accountable only for inconvenience created while patrons are actually leaving the premises themselves and in such ways as are more intimately connected with the winding down of the night's business on the premises. It might be construed as referring only to things over which the proprietor has direct control. Article 44(3)(b) is there to widen the net of enquiry significantly.

I take the view that Article 44(3)(b) is intended to bring within the ambit of enquiry precisely the sort of things about which the residents were so greatly disturbed during the previous era of nightlife at the Chestnut Lodge. Such things as the revving up of cars in the early hours of the morning, inebriated patrons singing loudly and offensively or otherwise behaving in a noisy and disorderly manner in the vicinity of nearby houses at any time up to 2.30 am or later still, necessitiating police intervention; children and parents being awoken from their night sleep, patrons urinating in nearby gardens, lobbing bottles and so forth.

At the outset, Mr. McCollum cautioned that I would hear a good deal of "emotive" accounts from local residents and pointed out that I had to be satisfied that "undue" inconvenience would be caused if the application were granted. Inconvenience, as such, was not the determining factor and, implicitly, inconvenience, as such, might well be expected.

The evidence which I heard from the residents was not what I would describe as emotive. It was merely factual. In some instances, such as in the case of Mr. Gregg Hughes, I can only commend the restrained and measured terms in which he recalled what, by any standards, was far beyond "undue inconvenience".

It was also a theme of Mr. McCollum's cross-examination in some instances that a resident might well have been expected to know of the difficulties surrounding the late night entertainment at Chestnut Lodge when he or she moved in. For my own part, I did wonder that I did not hear of the planning application in respect of the erection of such a large extension being vigorously contested, nor did I hear in any detail of determined efforts to oppose the renewal of either the entertainment licence or the additional permitted hours in the years following, and while the business endured under previous management. However, all of these are merely factors to be taken into account when assessing whether the previous business had in fact caused undue inconvenience. I find that it did. But that finding, in turn, is not the nub of the matter. It goes to inform the judgment on the real issue, namely what one is to expect if the additional permitted hours are granted now, with respect to activities at and around Chestnut Lodge in the future. In coming to a decision in that regard, I must take account of such ways in which I can be satisfied that things will be different this time.

I am satisfied that there will never be a return to the teenage events of which Sergeant Allen gave such graphic description. But then again, none of that impacted upon the question of additional permitted hours for the sale of liquor. The teenage discos ended at 10.00 pm and no alcohol was sold on the premises. Mr. Orr intends to run a Country and Western night on Fridays. I hope I do persons of "the older crowd", and the fans of Country and Western at that, no injustice when I say that I would expect such clientele to be of a distinctly more genial and orderly character, even in their cups. I would expect some inconvenience to be occasioned to persons residing in the vicinity, such inconvenience including by way of noise in sporadic bursts, as would be involved by patrons taking leave of each other outside, getting into and driving off by car, in particular. I am satisfied to the requisite standard that such inconvenience will not cause undue inconvenience.

But Saturday night would be a different matter entirely. A pop and rock, live entertainment aimed at people over 21 can be expected to attract a distinctly more exuberant clientele. I heard nothing which led me to believe that the condition and disposition of such persons, at the time of leaving the premise, anywhere between 1.00 and 2.00 am would be significantly different from what the local residents experienced on Saturday nights in the past, and continuing on occasion until much later. It is apparent that it was on Saturday nights, in the aftermath to just such a type of entertainment, that the residents were subjected, week in, week out, to gross and unacceptable disorder and disturbance, until well into the early hours of Sunday morning.

I take on board entirely and accept that Mr. Orr would do all in his power to ensure good order in and at his premises. My understanding, on the evidence, was that Mr. Hewitt was not significantly less diligent in his own efforts, but that he did not manage to control what people did, as they left the immediate area of the premises and, having left, made their way to transport home. Mr. McCollum contended that these were matters of public order, a police responsibility, and were not pertinent to the application. For reasons already stated, I do not feel it appropriate for me to adopt such an approach.

I appreciate that Mr. Orr would lay on trained doormen assiduously, although he himself concedes that the public have become "much more unruly" over the last 5 years. Those doormen, no doubt, would eject unruly elements who had got into the premises, or bar those who were unsuitable as they sought to enter in the first place. That, however, leaves such people in the vicinity; and I would not expect them to go quietly. I myself have the task of dealing with prosecutions arising from violent disturbances in the vicinity of public houses. Many cases arise from clashes as people, by no means mere teenagers, leave at closing time. All the evidence leads me to expect a magnification of the consequential disturbance by all such behaviour when it occurs in this low-density residential area immediately adjacent to Chestnut

Lodge. Quite apart from the frankly undesirable elements who would be attracted to such a Saturday night event (even if in relatively small numbers), I would expect the clientele at such an event to be significantly more boisterous than with the older, Country and Western, set.

It does not matter whether those residents who moved in after 1995 ought to have expected such disturbance from the Chestnut Lodge as it was then. There is no provision for that kind of qualification in the Order. The issue is simply whether I can be satisfied, to the requisite standard, the such additional hours, if permitted, will cause undue inconvenience to persons residing in the area. To paraphrase another maxim, the applicant must take his neighbours as he finds them.

Mr. McCollum also contended that I could be satisfied that no undue inconvenience would be occasioned but that, in any event, should such undue inconvenience actually arise, the residents had their rights under Article 44(5), which provides;

> (5) Where, upon complaint made under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981, a court of summary jurisdiction is satisfied—
>
> > (a) that the business carried on in premises to which an order under paragraph (1) applies is being conducted during the hours mentioned in paragraph (2) or any period immediately following their termination in such a manner as to cause undue inconvenience to persons residing in the vicinity of the premises; or
> >
> > (b) that such hours are causing undue inconvenience to persons residing in the vicinity of the premises; or
> >
> > (c) in the case of a complaint made by the sub-divisional commander of the police sub-division in which the premises are situated, that the specified part or parts of the premises are not being used for the purpose of habitually providing entertainment or substantial refreshment or both entertainment and substantial refreshment, as the case may require,
>
> the court may—
>
> > (i) revoke the order; or
> >
> > (ii) modify the order or, in relation to the order, the hours mentioned in paragraph (2); or
> >
> > (iii) make the continuance of the order subject to such terms and conditions as the court thinks fit.

Part VIII of The Magistrates' Court (NI) Order 1981 provides for procedures by way of civil complaint.

The remedy provided under Article 44(5) is all very well, though I am bound to say that the residents in former years either did not know of it, or were unable to avail of it, for whatever reason. It existence does not alter the fact that I have to be satisfied at this stage that any additional hours which I now permit will not cause undue inconvenience. I recognize that it might serve well should circumstances later cause the licence holder to switch from Country and Western to some other musical culture for the Friday night entertainment in the future, should that bring a deterioration in the quality of life for the local residents. The existence of that long-stop provision does also make it sensible that the additional hours run with the liquor licence henceforth and do not themselves require to be expressly renewed each year in the normal course of events, though always without prejudice to the right of others to object to such annual renewal in a form which confines the objection to such additional hours or any aspect of them.

Having weighed the evidence and considered the matter with care during preparation of this reserved judgment, I have concluded that I am not satisfied as required in respect of the additional permitted hours sought for Saturday nights. I have no particular difficulty with the idea of extending the hours on the weekday evenings for the purpose explained by Mr. Orr. Conversely, I heard nothing which amounted to a reason for such extended hours on Sundays.

I therefore grant an order, directing that, on each Monday, Tuesday, Wednesday, Thursday and Friday the hours from eleven in the evening to one in the morning of the day next following in relation to each weekday so specified; and on each Holy Thursday and Christmas Eve the hours from eleven in the evening to twelve midnight shall, in addition to those mentioned in Article 42(1) of the said Order, be included in the permitted hours for the part(s) of the premises particularly delineated on the plan previously deposited with the Clerk of Petty Sessions in relation to any like application and on the grounds as set out in the Application.

Dated this 13th day of December 2002.

John I Meehan, R.M.
Lisburn Courthouse.