

Neutral Citation No: [2019] NIQB 21

Ref: McA10879

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 18/2/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

ON APPEAL FROM THE DECISION OF THE COUNTY COURT JUDGE FOR
THE DIVISION OF CRAIGAVON

IN THE MATTER OF AN APPLICATION FOR THE PROVISIONAL GRANT OF
AN INTOXICATING LIQUOR LICENCE PURSUANT TO ARTICLE 5 (1)(B) OF
THE LICENSING (NORTHERN IRELAND) ORDER 1996

BETWEEN:

DENMIN LIMITED

Applicant/Respondent;

AND

JOHN HUGHES AND SINEAD HUGHES

Objectors/Appellants.

McALINDEN J

Introduction

[1] Having delivered my substantive judgment in this matter on 7th February, 2019, Mr McCollum QC requested me to formally adjudicate on the matters set out in Article 7(4)(a) to 7(4)(e)(i) of the Licensing (Northern Ireland) Order 1996 ("the 1996 Order"). In my substantive judgment, I had indicated that I did not consider it necessary or appropriate to do so, having regard to my findings in respect of the matters to be established in Article 7(4)(e)(ii) and my wish not, in any way, to trespass upon the jurisdiction of a lower court who would have to consider such matters afresh during the course of any fresh application. Having carefully considered and reflected upon the matter, and having taken into account the possibility that my substantive judgment might be the subject of an appeal on a point of law; and that, in such circumstances, the Court of Appeal might expect that all issues at large before the High Court should have been the subject of formal

adjudication, I remain of the view that it would not be appropriate for me to formally adjudicate upon the matters set out in Article 7(4)(a) to 7(4)(e)(i) of the 1996 Order, as I do not wish to run the risk of in any way usurping or appearing to usurp the function of the lower court, if any fresh application is made in this case.

[2] In any event, any determination on vicinity and unmet need is clearly period dependent and any determination by this court could only and would only relate to the period between mid 2018 and early 2019 and would have limited relevance thereafter, if circumstances on the ground were to change in the vicinity of the Applicant/Respondent's premises as any such changes may have an obvious impact on the issues of vicinity and unmet need.

[3] Further, in light of the approach on determining vicinity (look at whether the objector's premises are within the vicinity) recommended by Gillen J at paragraph 38 of his judgment in *Sainsbury's v Winemark and Others* [2012] NIQB 45, which was adopted by me in my first judgment in the present appeal which dealt with the issue of locus standi, it could be viewed as contradictory for me to now resort to a different approach to determining vicinity (precisely describe the vicinity by reference to a map or plan). However, there are obvious difficulties in strictly following the approach recommended by Gillen J in the *Sainsbury's* case in relation to the issue of vicinity in the circumstances of the present case where no other owner/operator of licensed premises in the general area of the Appellant/Respondent's premises pursued an objection to the grant of a licence to the Appellant/Respondent either before the lower court or this court. It may have been necessary in this case to adapt that approach recommended by Gillen J by looking at all the licensed premises within the general area and determining whether each one was within or outside the vicinity.

[4] These potential complications serve to reinforce my view that I should not formally adjudicate on these issues when it is unnecessary and may be inappropriate for me to do so.

[5] However, I recognise that a considerable amount of court time was devoted to the issues of vicinity and unmet need and, to a lesser extent, fitness and suitability in this appeal and in appreciation of that, if I had been required to adjudicate upon these issues, I would have had no hesitation in finding that the statutory requirements set out in Article 7(4)(a) to Article 7(4)(d) were met. In relation to the matters of vicinity and unmet need, having regard to the guidance set out in the *Sainsbury's* case (vicinity) and paragraphs [24] and [25] of Gillen J's judgment in *Russell Ltd v D W Retail* [2013] NIQB 56 (unmet need), I would have been satisfied, by reason of the thoroughly tested evidence of Mr Maguire and Mr Denny, that the vicinity in this particular case at the relevant time was as described by Mr Maguire in his report, his oral evidence and the map and that unmet need was established.