

CARRICKHALL HOLDINGS

1979 No. 4063P



CARRICKHALL HOLDINGS LIMITED



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Judgment of Mr. Justice McWilliam delivered on the 30th June 1982.

These proceedings relate to premises known as Carrick Hall Hotel, 69, Orwell Road, Rathgar, Dublin, and are brought by the Plaintiff by way of appeal from a decision of An Bord Pleanala, given on a reference to it by the Defendant under Section 5 of the Local Government (Planning and Development) Act, 1963, that the change of use of the premises from use as a hotel without a public bar to use as a hotel with a public bar is development within the meaning of the Act of 1963 and is not an exempted development.

The premises were probably acquired by a Mrs. McWoeney and her husband shortly after the end of the second world war. There is no evidence as to the use of the premises by them at the beginning but I think it may be assumed that they acquired it for use as a small hotel. In 1958 a hotel licence was obtained

for the premises. At the time of the purchase of the premises by the Plaintiff in 1975 they were described on a brochure as Carrick-Hall Flatel and this advertised self-service catering in self-contained apartments.

After the purchase, the Plaintiff applied for a transfer of the licence. This was refused in the District Court but was granted, on appeal, by the Circuit Court. At some stage an application was made for an ordinary seven-day licence but I have not got any particulars of this, whether it was made on the application for a transfer or whether it was made on behalf of Mrs. McWeeney or on behalf of the Plaintiff. However and whenever it was obtained, it is accepted that the Plaintiff is the holder of an ordinary seven-day licence as distinct from a hotel licence.

As a result of obtaining the ordinary seven-day licence, the Plaintiff reconstructed or altered the ground floor of the premises so as to incorporate a lounge bar and there conducted an ordinary publican's lounge bar trade. To advertise this, a sign proclaiming "Lounge Bar" in large letters was erected but no planning permission had been obtained for this and the planning

authority required it to be removed. These changes led to a large increase in the licensed trade and, as a result, to a large increase in the number of motor cars coming and going and parked in Orwell Road, frequently obstructing the gateways of the residents, to a considerable increase in noise in the late evenings and to a certain amount of abuse by customers of the residents who complained either to the customers or to the employees of the Plaintiff.

Although the Plaintiff was given notice of the reference to An Bord Pleanala under Section 5 and furnished with copies of the correspondence between the Defendant and An Bord Pleanala and was invited to make comments, the invitation was not accepted and no representations were made on behalf of the Plaintiff.

The decision of An Bord Pleanala was given without any statement of the grounds of the decision or other comment.

The representations made by the Defendant to An Bord Pleanala did not refer to a defence which was made, by amendment, on the morning of the hearing, namely, that there had been a change of user in a habitable house in that the ground floor had been used exclusively by the McWeeney family as their

dwelling and that the conversion of this floor into a bar and other public rooms was a change of user for which permission was required. It was then argued, presumably by reference to Section 10 of the Housing Act, 1969, that no permission for development under the 1963 Act, can be given until an application for permission for use otherwise than for human habitation under the Housing Acts has been granted. No permission under the Housing Acts was sought.

This belated defence was met by references to a line of English authorities from Hamilton -v- West Sussex Co. Co. (1958) 2 Q.B. 286 to Jennings Motors Ltd. -v- Environment Secretary (1982) 2 W.L.R. 131, in which the appropriate planning unit to be considered in any case was discussed with particular reference to the differences and similarities between the concepts of a new planning unit and a new chapter in the planning history of a unit.

I am of opinion that I am not concerned with these arguments at all. This is not an application for planning permission, indeed no application has been made with regard to these alterations, it is not a prosecution for carrying out a

development without permission and no enforcement notice has been served. This is simply an application for a decision whether the grant and use of an ordinary seven day licence in the place of a hotel licence is, in the circumstances of this case, a material change of use constituting development and, if it is development, whether it is exempted development or not. No suggestion has been made that the alterations, if they are development within the meaning of the Act, are exempted development.

Other breaches of the Act of 1963 have taken place and some of them have been dealt with but, although emphasised at the hearing, these have nothing to do with the present proceeding.

Similarly, emphasis was placed by the Defendant on the fact that the premises were not registered as a hotel and a cross-examination was directed towards ascertaining the number of bedrooms and the requirements which had been indicated by Bord Failte as necessary in order to obtain registration, leading to the suggestion that the hotel licence should not have been transferred or that the ordinary seven day licence should not have been granted.. Again I am not concerned in these proceedings

with the correctness of the decision in the Circuit Court although the question of registration may be relevant as an indication of the nature of the business being carried on, as is also the erection of the Lounge Bar sign.

It has been urged on behalf of the Plaintiff that the hotel licence was an ordinary publican's licence although there was a restriction preventing the installation of a public bar, and that the change to an ordinary seven day licence merely removed this restriction without altering the essential nature of the licence; the suggestion being that there is therefore no change of use. It is difficult to ascertain the effect of the long series of Licensing and Intoxicating Liquor Acts from 1833 to 1962, but it does appear that a hotel licence is an ordinary publican's licence and does not contain any restriction on sales to the public.

I have been referred to the judgments of the Supreme Court in the case of Readymix (Eire) Ltd. -v- Dublin Co. Co. delivered on 30th July, 1974, and to the judgment of Costello, J., in Patterson -v- Murphy delivered on 4th May, 1980. The decision in the Readymix case did not turn on the point, but Griffin, J., laid emphasis on the relevance of the very substantial increase

in the volume of vehicular traffic, indicating that it was a matter which it might be appropriate to consider. Costello, J., in Patterson -v- Murphy held that an increased scale of operations bearing no relation to the scale of operation previously carried on is a factor which may be taken into account when considering whether there has been a material change in use or not. He referred with approval to the case of Brooks and Burton Ltd. -v- Environment Secretary (1977) 1 W.L.R. 1294, in which Lawton, L.J., said at page 1306 "We have no doubt that the intensification of use can be a material change of use. Whether it is or not depends upon the degree of intensification."

In the present case, the evidence is conclusive that the change from a hotel licence without a public bar to an ordinary seven day licence with a public bar has changed the whole character of the business carried on in the premises and directly and for the first time caused the increase in traffic, parking, noise and other unsatisfactory changes in amenities for the local residents which I have already mentioned.

I am satisfied that there were ample grounds on which
An Bord Pleanála could make the decision they did make and I
agree with it.