



LICENSING ACTS

-and-

CENTENNIAL PROPERTIES LIMITED

Judgment delivered on the 20th day of December 1983 by Finlay, P.

This is an Application for a Declaration under Section 15 of the Intoxicating Liquor Act, 1960 to the effect that certain premises situate in the Tallaght area, if constructed in accordance with plans submitted with the Application would be fit and convenient to be licensed pursuant to Section 13 of the Act of 1960. Before the case was entered upon a preliminary issue arose as to the locus standi and right to be heard of certain objectors who were inhabitants of the parish in which the proposed premises would be located, and who had not appeared at the Circuit Court hearing from which this is an Appeal. It was submitted on behalf of the Applicants that I should deny to these persons any right of audience because only persons who had been objectors and in that sense parties to the original Application before the Circuit Court could be heard on the Appeal, I have already ruled in this case, having heard submissions on behalf of the Appellant that:-

- (1) having regard to the fact that there is an Appeal properly before me, and brought by an objector, who did appear in the Circuit Court, namely Joseph Kilbride & Son Limited,
- (2) having regard to the fact that under Section 13 of the Act of 1960 I am obliged to exercise discretion as to whether even when the statutory proofs have been complied with I should grant or refuse an Application on the grounds set out in Section 13(1) sub-clauses 1 and 2, and
- (3) being satisfied that these objectors had failed to appear in the Circuit Court due to a bona fide mistake, that I had jurisdiction to hear them on the hearing of this Appeal, and

it was in the interests of justice I should do so.

A further preliminary issue arose as a matter of law and this arose between the Appellants and Messrs Kilbride & Son Limited, and it was the question as to whether the existence of Kilbride & Sons Limited licensed premises, known as The Jobstown Inn, which are admittedly within one mile of the proposed site, brought into operation Section 20 of the Act of 1962, and thereby prohibited the granting of the Appellant's Application without vesting in me any discretion. The relevant provisions of Section 20 of the Intoxicating Liquor Act 1962 are to be found in sub-clause 2(a) and are as follows:-

"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 one 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 1st July 1960, and is of the same character as the licence that would fall to be granted if the Application were allowed."

The premises, the Jobstown Inn, has an ordinary Publican's Seven Day Licence, and that is of the same character as the licence that would fall to be granted, if pursuant to a Declaration under Section 15 a licence issued under Section 13 in this case. The licensing history as proved before me of the Jobstown Inn was that it had been licensed probably from away back in the 1860's/70's, certainly at the time of the passing of the Licensing (Ireland) Act 1902, and remained so continuously licensed up to 1982. In 1982 the proprietors and owners of that public house decided to reconstruct it so as to make it significantly larger, the net floor space available to the public increasing by something approaching three-quarters, and making it thus more suitable for the carrying on of the business of the licence trade in it. They in fact submitted, proposals for extension and renovation which involved demolition of the part of the premises and the addition of one significant other part, and having received a declaration of approval for that, they subsequently carried out the reconstruction

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and were granted a licence under Section 6 of the Act of 1902. The net question which arose on this issue was whether the licence under which the Jobstown Inn is now licensed as an ordinary Publican's Seven Day Licence was first granted on or before the 1st July, 1960. In other words whether the phrase "was first granted" is to be related back to the original licence under which these premises were licensed all throughout the time up to 1982, or to the licence, first granted under Section 6 of the 1902 Act within the last year or so. I have heard submissions from both the Applicant and these objectors on this issue, and have come to the conclusion the Jobstown Inn does not come within the provisions of this sub-section of Section 20. The provision of Section 6 of the 1902 Act as to its material provisions reads:-

"Nothing in this Act shall operate to prevent the granting of new licences, where the Licensing Authority thinks fit, to premises adapted to or adjoining a premises licensed for the sale of intoxicating liquor at the date of the passing of this Act."

One starts with the proposition that what is referred to is not the extension or enlargement of a licence but the granting of a new licence. I am satisfied that on the authority of the decision of the former President Mr. Justice Davitt in Denis Guiney and the Licensing Acts 75 I.L.T.R. as approved by the Supreme Court in Macklin and Another .v. Greacen & Co. Ltd. and Others, that the effect of the obtaining of a licence under Section 6 means in law that the licence that they now hold was first granted to them after 4th July, 1960. I am satisfied that creates an anomaly and does not appear to be consistent with the provisions of Section 6 of the 1902 Act which apparently encourages the bringing of an Application under that Section so as to improve the premises for the purpose of the licence trade, but it is not within my function nor should I by judicial decision in the interpreting of the statute seek to remove anomalies unless the statute would justify me in so doing. I

am satisfied Section 20 of the Act does not justify me in doing that. The case therefore falls to be dealt with on the merits and on the other provisions to which I have been referring, and in that context the first matter is, I am quite satisfied the Appellants have satisfied all the necessary statutory proofs with regard to the location of the premises, the right to extinguish, two existing licences and the P.L.V. of the premises. I am also satisfied on the evidence and there has been no contest about it, that the physical layout of the premises intended to be built as a public house with its internal fittings and fixtures is fit or suitable for the carrying out of a licenced trade, and none of the features of fire safety are inadequate, toilet provisions are not inadequate, heat, light and air are adequate. Notwithstanding a contention made on behalf of the objectors that difficulty or delay in the obtaining by them of costs awarded to them in relation to a previous application for a licence on this site by a Company of which Mr. Flynn, a Director of the Applicant Company herein was also a Director, was a ground of unfitness in the Applicants, I am not satisfied that is so. On the positive side, having heard Mrs. Flynn, who has a substantial interest and is going to be an effective Manager of the Company proposing for this matter I am satisfied that she is a person of good character and would be a suitable person to be licensed. The next issue which falls to be decided under the provisions of Section 13 of the Act of 1960 to which I have already referred, are whether in my absolute discretion I should prohibit the issuing of the licence by reason of unfitness or inconvenience of the premises. I construe these two words as follows: "The unfitness" as dealing with the premises themselves and I have dealt with that. "Inconvenience," I construe as meaning and including the location of the premises. I am satisfied on the evidence in this case that the location of these premises would be that they would be situate in close proximity to a large open space devoted to leisure and sport which covers about 50 acres. That they would be immediately

beside what appears to be a significant shopping centre, including a supermarket provided in what is a relatively new development and housing estate in the Tallaght area. I am further satisfied on the evidence which I have heard that there are particular features with regard to the development of this estate. The first is that it contains a very high proportion indeed of young people in two senses. One in the sense of young married people starting to rear families, and secondly in the sense of children both of Primary School age and children in their early teens. Every development or housing estate or housing area in the city or on the perimeter of the city is likely to include a mixture of population, adults, people with families younger or older, and a number of young children. I am satisfied on the evidence I have heard in this particular area there is a very high proportion of children both in the sense of young teenagers and small children. I am furthermore satisfied that the Community School is not as Mr. Murray, the Headmaster said to me in evidence this morning, the 9 to 5 or 9 to 4.30 type of school which closes its activities, but is in addition a significant centre for both leisure and educational facilities for this growing young population, and that it is directly linked to and associated with this large open space which has developed not only for school, sport and recreational activities, but also for general community activities of that type.

Having regard to all these features I have come to the conclusion that it has been established to my satisfaction as a matter of probability that the location of a licensed premises at this particular site, having regard to the features I have mentioned is not a convenient site, or to put the matter in a positive way is inconvenient within the meaning of the sub-Section I have quoted. I have come to that conclusion notwithstanding the evidence adduced on behalf of the Applicant, that the existence in a new housing development or what are often described as satellite towns of a shopping centre with licensed premises contained

in it is a common planning feature. I have had regard to that, but on the individual evidence on the type of development and area I am dealing with in this case it is not a convenient area for a licensed premises. I reluctantly therefore hold, because I am aware of the hardship on the Applicant, and I am satisfied of the bona fides and good character of the Applicant, that I must refuse to grant a licence in this case.

I feel it only fair and proper to the parties to deal with two other issues that arose, lest there are further proceedings, and evidence having been led, my view would be of any influence. The major objection was made by Mr. Kilbride on behalf of his Company and by residents as well, that there was not evidence of demand in the sense of demand for this licensed premises and that related to the ground of objection open under the 1960 Act, of the number of existing licensed premises.

I am satisfied that that ground would not have justified me refusing to grant a licence if it was the only ground of objection. It is not necessary to prove an actual overcrowding in relation, in my view to licensed premises though I know it was not adduced in case. I myself in my experience pay a limited regard only to the sort of evidence that asserts that on particular days at particular times the witness found it hard to get a drink in some premises. That is always going to happen. It does not prove anything in particular. I would be satisfied to raise another inference from the evidence I have heard, which indicated that the nearest licensed premises as being one public house a mile away, the next nearest, as I understand it being the Belgard Inn which is of a character and type which not every customer may want, namely a massive premises with entertainment and other facilities. Having regard to the existence of seven hundred and odd houses in the estate, I am satisfied that the number of licensed premises and it has to be a negative indication, would not contra-indicate the issuing of a licence. The last issue before me, is whether the erection of these premises in this place would be unreasonably detrimental to the business of Kilbrides, the Jobstown

Inn. I am not satisfied that this is so. I think it is a heavy onus, and I think Mr. Cooney recognised it and tried to discharge it, but I am not satisfied that the opening of a public house on the evidence as being unreasonably detrimental. Undoubtedly it could be detrimental, and at a period when there is a recession in the trade, but I am not satisfied it would be unreasonably detrimental, had it to be decided on that issue. These observations are obiter to what my decision must be, that I must refuse the licence on the basis of the inconvenience of the premises.

*agreed.*  
*J. G. Finlay*