

Neutral Citation No. [2010] NICty 2

Ref:

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

Delivered: 29/06/10

**IN THE RECORDER'S COURT**  
**FOR THE DIVISION OF LONDONDERRY**

**In the matter of an application under the Betting, Gaming, Lotteries &  
Amusements (Northern Ireland) Order 1985**

**(Article 12(1), 14(1) Schedule 2, paras: 2, 6)**

**BETWEEN:**

**S P GRAHAM LIMITED**

**APPLICANT**

**and**

**NORTH WEST BOOKMAKERS LIMITED (LADBROKES)**

**OBJECTOR**

**His Honour Judge Piers Grant**

**Appearances:**

Mr J Lavery QC for the Applicant

Mr A Comerton QC for the Objector

1. In this application the applicant company seeks the provisional grant of a Bookmaking Office Licence in respect of premises at 5 Anderson Avenue, Limavady, within what is commonly known as the Bovally Retail Centre.
2. The objector, North West Bookmakers Limited, served a Notice of Objection within the provisions of Schedule 2 Paragraphs 5 and 6 of the Betting, Gaming, Lotteries & Amusements (Northern Ireland) Order 1985. Two other objectors, McClean Bookmakers, and Central Bookmakers Limited served Notice of Objection to the application on 7<sup>th</sup> January 2010 but each of these applications was submitted well outside the time limit fixed by the 1985 Order for such objections. By letter dated 12<sup>th</sup> January 2010 the solicitors for these objectors withdrew the objections on behalf of their clients.
3. By letter dated 18<sup>th</sup> January 2010, Macaulay Wray, Solicitors served Notice of Objection on behalf of their client, James Desmond Higgins. This Notice of Objection was also served outside the statutory time limit.
4. On the morning of the hearing, notwithstanding this late notice the solicitors on behalf of James Desmond Higgins, made application to me to extend the time for service of the Notice of Objection and applied to this court to grant leave to these

objectors to participate in the hearing and raise their objection to the applicant's application.

5. It was accepted and acknowledged by the legal representatives on behalf of James Desmond Higgins that his Notice of Objection was not served in accordance within the provisions of Schedule 2 Paragraphs 5 and 6. I drew the legal representative's attention to the decision of the Court of Appeal. In McClellan and Others -v- Agnes Kirkpatrick and Others 2002 (NICA) which firmly established the principle that the specified time limits set out in Schedule 2 are to be observed and that this court does not have a discretion to extend the statutory time limit. No fresh arguments were raised before this court and accordingly I considered myself bound by the decision of the Court of Appeal and refused to extend the time limit and ruled that the objection sought to be made on behalf of Mr Higgins was out of time and inadmissible.
6. Evidence of the statutory proofs was laid before me and I am satisfied that these are in order, that the application had been properly advertised, all statutory notices served, that the premises are suitable for use as a Bookmaker's Office and there is no police objection.
7. The objectors, for whom Mr Alan Comerton QC appeared, raised in support of their objection most of the grounds specified in Articles 12(4) and (6) of the 1985 Order but without formally abandoning any of those grounds of objection Mr Comerton made it clear that the principle ground of objection to the application was that set out in Paragraph (g) in the Notice of

Objection, what is commonly called the adequacy ground. The evidence led by the applicant concentrated on this issue.

8. Article 12(4)(j) of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 provides:

'(4) A court shall, subject to paragraphs (5) and (7), refuse an application for the grant of a bookmaking office licence unless it is satisfied –

(j) that, having regard to the demand in the locality in which the premises to which the application relates are situated for facilities afforded by licensed offices, the number of such offices for the time being available (including any premises for which a licence is provisionally granted) to meet that demand is inadequate'

Thus it can be seen from the plain language of the statute that this court is required to identify the locality in which the applicant premises are to be situated, determine the demand in that locality for bookmaking facilities and decide whether the applicant has demonstrated that the existing bookmaking premises are inadequate to meet the existing demand.

9. Legislation in relation to the grant of bookmaking licences and liquor licences has a common genesis and it is clear that Parliament has determined that it is in the public interest that the establishment and management of bookmaking offices and licensed premises should be controlled and restricted. A primary element of the statutory control and restriction is the requirement that the courts should grant no more than the minimum number of licences within a locality to meet the demand from punters for bookmaking services within the locality.

10. Locality

The authors of previous judgements have avoided setting out any clear definition of locality for the simple reason that locality will be determined by taking account of a range of factors.

McGonigal LJ when considering the difference between vicinity and locality in McFerran v Casey and Others (unreported 1975) said:

“Locality is a much wider area and takes into account a number of factors other than mere physical proximity, and has regard not only to geographical limitations, but, also, to matters which go to make up self-contained or self-sufficient estates. I do not intend in any way to define locality or to indicate the matters which have to be taken into account. It is sufficient for the purpose of this case if I say, as I said in Magill and Another v Bell and others (1972) NI 159,164, that it denotes a much wider area than vicinity.”

11. This was cited with approval by McDermott LJ in Re Samuel A McClean (1994 unreported.) Who added:

“In my opinion vicinity is not to be confused with locality which defines an area but means a physical proximity best indicated by the sense of neighbourhood.”

12. In this case I do not have to independently determine the locality to be considered. This is clearly set out on the plan agreed between the parties and includes the whole of the town of Limavady. In my view the agreement between the parties is entirely appropriate and the area defined as the locality in that

plan appears to me to stand out as the obvious and natural locality contained as it is by natural boundaries of the River Roe and the Castle River.

13. Demand and adequacy of demand.

The clearest statement of the law, a statement which has stood the test of time and which has invariably been cited with approval is that of Judge Rowland QC in Fox v McGranaghan and Others (unreported 1990). It is worthy of repetition;

“Firstly it is the actual demand for betting facilities that has to be proved; secondly the area of inquiry extends to the locality in which the premises are situated; thirdly if such a demand is established the question has to be answered - to what extent, if at all, do the existing facilities for betting meet that demand? If the answer to that question is that the existing facilities are not sufficient to cope with the demand then it follows that the number of offices for the time being available is inadequate; fourthly this whole question has to be regarded from the standpoint of the betting public and not from the standpoint of the bookmakers. The 1985 Order as a whole is regulatory and to a certain extent restrictive of the number of bookmaking offices in a given locality. The legislation was designed to impose a measure of control over the spread of bookmaking offices whilst at the same time ensuring that the punter, wherever he lives, would have a reasonable facility for placing bets. Inadequacy of facilities is therefore very much a relative test - a question of degree in each case, just as the question of “demand” within a given locality is also a question of degree. There may be villages,

hamlets or small towns in Northern Ireland which have no bookmaking office but which as a result of many years growth in housing and population have produced an obvious demand for betting facilities; or there may be similar localities where, because of their character, type of people and number of potential punters, there is no such demand. Furthermore the existence of betting and gaming legislation over the past thirty years has produced keener competition among bookmakers for expanding their business particularly in the offices which generate very large turnovers in betting. One office may out-perform another office in the same locality and as the volume of business increases in the office so there will be a desire to expand by opening a second or a third office or alternatively other bookmakers may seek to share in the very large turnover generated by one office by applying for a new bookmaking office licence in the same locality. But the granting of new licences does not depend on the amount of turnover available for bookmakers but rather on the demand by the public for betting facilities and whether that demand has been met by the existing facilities. When McGranaghans, whose office generates a very large turnover in betting, applied for an additional office licence in 1977 they were turned down on the grounds that the inadequacy of the existing facilities had not been proved." Judge Rowland went on to caution that population figures as a means of proving demand may be misleading and need to be carefully scrutinised.

14. In Malachy Vincent McCartan v Finnegan and Others 1994 (NI)132 the Court of Appeal reviewed a long list of authorities

and from this review and the other authorities cited to me, a number of principles emerge:

- 1) That the statutory test is inadequacy of numbers not suitability or convenience; the adequacy of premises is not determined by ease of parking or the requirement on punters to walk short distances to place their bets. Inconvenience does not equate with inadequacy
- 2) The inadequacy test is not satisfied merely because there is a desire on the part of the public to have new premises closer or in a more convenient location.
- 3) Such matters as the range and variety of bets or of odds should be given little or no weight.
- 4) In determining inadequacy/adequacy the court should take account of other licensed bookmaker premises outside the specific limits of the locality but which are reasonably available to punters.
- 5) Any existing but unused licensed floorspace must be considered.

The overriding principle that emerges from these authorities is that the court must closely scrutinise the case put forward by the applicant to determine if the applicant has established that there is a real demand from punters that is not adequately met by the existing facilities which are available to punters.

#### 15. The Evidence.

The applicant called Mr Maurice Maguire a planning consultant with experience of giving evidence in connection with licence applications. He prepared a report which he submitted to the court as the basis of his evidence. He stated that there had been a significant population increase in the locality between 1961



and 2001 and that due to the physical and geographical constraints on development of additional housing most new or recent building had occurred to the south and east of the locality in the area of the proposed site for the applicant premises. Between 1988 and mid-2004 1332 dwellings were completed in the town most of this in the Bovally area. He contended and it is common case that during the period between 1971 and this application no new bookmaking office licences have been granted. Mr Maguire gave evidence and again it was common case that the two existing licensed premises are operated by Mr Higgins whose applications of objection were ruled inadmissible. These premises are situated at 7 Catherine Street and Linenhall Street in the town centre. He was critical of the parking arrangements in the immediate area of these two premises and contrasted this with the Bovally Centre which is served by some 115 free car parking spaces in the immediate vicinity. There is a medical centre, convenience store and off-licence in the Bovally retail centre. Mr Maguire was critical of the bus service from the Bovally area which ceases at 6:15 p.m. He contended that this was significant in considering evening betting for racing and football. He was also critical of the fact that the bus route was somewhat circuitous serving as it does all of the housing in the area. He felt that the alternative walking distance of 1.9 miles to the Higgins premises from the outer limits of the south eastern residential area was excessive.

16. He argued that the Bovally area and its new housing should be regarded as a discrete area in its own right producing its own demand for bookmakers services which he said were not catered for by the Higgins premises.

17. Under cross-examination he conceded that the town centre has all the usual facilities associated with a town of the size of Limavady, including Banks, building societies and retail outlets. He conceded that the town centre included a large Tesco supermarket, a Lidl outlet and a medium-sized Superquick supermarket and most of the commercial and retail activity occurs in the Town centre. He further conceded that he had not made any detailed survey of the available parking within the town centre and was prepared to admit that there are some 700 to 800 parking spaces available. In the course of cross-examination when asked about pedestrian routes to the town centre and the Higgins premises, he suggested that pedestrians would have to pass along routes through poorer housing areas presenting the threat of antisocial behaviour. He contended that this raised a "chill factor" to pedestrian access to the Higgins premises. This was not something that he had referred to in his report and was not convincingly supported by the evidence of local witnesses who appeared at the behest of the applicant. No evidence from the local police was called in support of this submission.

18. It was agreed that the Higgins premises comprise 1470 square feet at Linenhall Street of which 500 square feet was licensed but unused at present and 670 square feet at Catherine Street.

19. I heard evidence from four local punters: Gregory Pearson, Gerard Loughrey, Seamus Logue and Seamus Watson. None of these witnesses showed a strong commitment to betting other than Mr Watson and it was clear that their desire for a bookmakers office at Bovally arose not from need or the inadequacy of existing premises but rather a desire to have this

facility close by. In the case of Mr Logue it emerged that he tended to places bets and then meet up with friends in the pub in the town centre. Although these witnesses were critical of the walking distances and the bus service none of them said that this had prevented them from placing bets or interfered with their betting habits. At its height their evidence indicated a degree of inconvenience arising from these two factors but inconvenience that could be readily accommodated in practice. I can accept their wish for a more conveniently located betting shop but remind myself that inadequacy not inconvenience is the statutory test.

20. Christopher Deery has been the general manager for the applicant for the past 11 years. He expressed the opinion that there is some 30% of unmet betting demand in Limavady but could offer no evidence in support of that proposition other than his own opinion. He did not produce any survey evidence to demonstrate either public demand or punter demand and had not commissioned any survey evidence. He produced photographs which purported to show parking difficulties in the area but was unable to give a date or time when these were taken. His photographs were confined to the immediate area around the Higgins premises and did not show other streets or other parking facilities. In the event the picture presented by his photographs did not demonstrate any significant traffic difficulty.

21. He gave evidence claiming that he had visited both of the premises and that there was congestion and heavy trade being conducted when he was there. This was aimed at calling into question the adequacy of the facilities provided at the Higgins

premises, their ability to service existing demand and was adduced to demonstrate that available bookmaking facilities within the locality are inadequate. Regrettably and of concern to me, he could not identify the dates or times when he attended, he had no notes or records of his observations and no other independent supporting evidence was called by the applicant. I found his evidence wholly unconvincing and unsatisfactory.

22. Parliament has imposed on licensing courts a significant duty of control and regulation over the grant of new bookmaking licences and in doing so has established a high threshold to be met by applicant bookmakers before a finding of inadequacy can be made. This has been further defined and explained by a rich vein of judgements handed down at all levels over the years. Many judges have called into question the type and quality of evidence marshalled and presented by applicants. In particular they have doubted the value of evidence from a few "selected" punters drawn from the locality and invited by the applicant to give evidence of inadequacy and strong demand on behalf of their neighbours. Without any disrespect to the motive or interest of those called in this or other cases I venture to suggest that judges are unimpressed by most of such evidence and rarely if ever place much store by it.

23. In these modern times, there exist highly sophisticated communications and technology based payment methods, producing growth in and potential for on-line and other electronic betting. Punters demand can and will be met by other forms of betting rather than relying solely on the fixed traditional betting shop. In such changing circumstances it is

wise to recognise that it will become more and more difficult for applicants to satisfy the inadequacy test and they will only do so by presenting detailed, reliable and persuasive evidence from an independent and authenticated source. For my part I feel that courts are entitled to have such evidence presented in support of an application. I can see little or no reason why properly focussed consumer surveys, carried out by independent and unimpeachable organisations, cannot be commissioned and the results presented in court. The questions posed will have to be open questions and both the courts and objectors will be alert to any tendency on the part of the canvasser or those who compile the questions to direct or influence the outcome. In carrying out such a process a prospective applicant will enjoy the benefit of determining whether there is any real inadequacy in the locality before embarking on the costly process of applying to court for a licence.

24. I visited both of the existing premises to inspect and assess the facilities provided. My visits took place on a Thursday afternoon at about 3 p.m., a time which would not be the busiest but would, in my view be reasonably representative of weekday betting. I found the premises to be spacious with excellent circulation space and more than adequate terminals where bets can be made and paid out. The full range of racing press is displayed and TV monitors are available to show sporting events and results in all areas. I did not look at the additional licensed area which is currently held in reserve in the Linenhall Street premises but I am satisfied that the existing premises are able to provide excellent facilities.

25. At the outset of Mr Comerton's application I raised with the parties whether it would be appropriate to put his client to his election in accordance with the principles stated by Gillen J in Mary Bernadette Magill -v- Ulster Clinic and Others (2009) NIQB 81. Mr Comerton submitted that I should not do so as the procedure regarding such election has traditionally been different as between the High Court and County Court. Mr Lavery QC declined to urge me to put Mr Comerton on his election and in terms agreed with his approach. I for my part am not convinced that any such distinction between the procedures of the two tiers should remain, if modern procedures and the circumstances of the case call for election by a party. It seems inappropriate, in the absence of court rules establishing and defining such a distinction, that tradition alone should be the basis for continuing a different approach.

26. I do not have to decide this issue. The licensing court has been given a wider role than that performed in the adversarial sphere. It must be satisfied that the statutory tests are met and should not grant a licence unless they are met even in the absence of objection by anyone. To that extent it would not be appropriate to exclude evidence relevant to the issue of adequacy where this might be available. The court should consider any relevant evidence and make its own enquiry where the evidential picture is incomplete. This is well illustrated by the frequent inspection visits carried out by licensing judges. For this reason alone I do not put the Objector to his election.

27. In an application such as this I must consider all of the evidence presented by the applicant and must at this stage take the applicant's case at its height. As the case presently stands I am

satisfied that the Higgins premises alone provide more than adequate facilities to meet bookmaking demand within the Limavady locality. In reaching this conclusion I have not had to take into account the facilities available in Coleraine, Eglinton or other outlying areas. The fact that there are an additional 500 square feet of licensed premises available to Mr Higgins, who I am sure is a commercially astute bookmaker, which he has not so far required emphasises the fact that existing demand is adequately met. . I am not satisfied, that on the evidence led before me, the Applicant has demonstrated that the facilities provided by the two existing licensed offices in the locality are inadequate to meet demand within the locality. Accordingly I accede to the application of the objector and dismiss the application.