Neutral Citation No: [2021] NICty 1 ***Judgment: approved by the Court for handing down*** ***(subject to editorial corrections)***	***Ref:*** **[2021] NICty 1** ***ICOS No:*** ***Delivered:*** **20 /01/2021**

IN THE COUNTY COURT FOR NORTHERN IRELAND

BY THE COUNTY COURT JUDGE

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2017/17

BETWEEN:

GALA CASE LIMITED

Applicant

and

NORTH WEST BOOKMAKERS LIMITED T/A LADBROKES

Objector

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Mr L G McCollum QC (instructed by Anderson, Agnew & Co solicitors) for the Applicant
Mr B F Fee QC (instructed by O'Reilly Stewart solicitors) for the Objector

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HIS HONOUR JUDGE GILPIN

[1] This is an application for the Provisional Grant of a Bookmaking Office Licence in respect of premises situate at 12-14 Quay Street, Bangor, County Down ("the Quay Street premises").

[2] The Applicant is a limited liability company, Gala Case Limited t/a Toals Bookmakers ("Toals"). The directors of Toals, Gary Thomas Toal and his daughter, Lauren Ann Toal operate some 49 Bookmaking Offices.

[3] The proceedings were commenced by way of a Notice of Application dated 4 August 2017.

[4] Prior to the proceedings coming on for hearing before this court, North West Bookmakers Limited t/a Ladbrokes ("Ladbrokes"), the Objector in these proceedings, attempted to restrain Toals from pursuing its application for the Provisional Grant before this court. The basis of this attempt was a contention by Ladbrokes that an Agreement made on 8 March 2004 by Toals in settlement of other proceedings prevented them pursuing an application for a Bookmaking Office Licence in respect of the Quay Street premises. In her judgment in North West

Bookmakers Ltd t/a Ladbrokes v Gala Case Ltd t/a Toals Bookmakers [2019] NICh 12 McBride J refused the application to restrain Toals from pursuing its application for a Provisional Grant and thus the substantive application proceeded before this court.

[5] Aside from Ladbrokes, other objectors, namely S.P. Graham Retail Limited, Columba Eastwood and Patrick & Michael Smith had lodged objections to the application for a Provisional Grant. However, all the objectors, save for Ladbrokes, withdrew their objections.

[6] Professional bookmakers began to make their appearance in the late eighteenth century. When the law made betting contracts unenforceable bookmakers insisted on receiving cash in advance and there followed a growth in bookmaking offices to facilitate the demand for cash betting.

[7] However, this was not thought desirable and thus the Betting Act 1853 was enacted which effectively outlawed bookmaking offices.

[8] It would seem that those who, despite the prohibition, sought to carry on business as Bookmakers from offices choose premises in secondary locations away from the gaze of the authorities.

[9] The Betting and Lotteries Act (NI) 1957 made provision for the lawful carrying on of bookmaking from a bookmaking office. The 1957 Act made it an offence to carry on business as a bookmaker in any premises unless both the bookmaker and his office were licensed.

[10] I was told that on the coming into force of the 1957 Act all five existing bookmaking offices that were already operating in Bangor successfully obtained licences.

[11] Over the intervening years attempts to open additional offices in Bangor beyond the original five have failed.

[12] In 2017, when this Application was issued, all five of the original bookmaking offices continued to operate at Dufferin Avenue, King Street, Mill Row and Bank Lane all operated by Toals and one at Queen's Parade operated by Ladbrokes.

[13] However, on 3 February 2020, Toals closed its office at Bank Lane, leaving four offices operating in Bangor. Its licence was surrendered to this court.

[14] The law in this area in now to be found in the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 ("the 1985 Order").

[15] Article 12 (4) provides that a court shall refuse an application for the grant of a Bookmaking Office Licence unless a number of prescribed conditions as set out therein are satisfied.

[16] In this case all of the prescribed conditions set out in Article 12 (4) have been satisfied except, Ladbrokes submit, that set out in Article 12 (4) (j).

[17] The issue as to whether Article 12(4)(j) has been satisfied is the contentious issue this court is still required to determine.

[18] Article 12 (4) (j) requires that, before granting a Bookmaking Office Licence, a court must be satisfied:

> "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;…"

[19] The central issue in this case is whether the court is satisfied that the four existing Bookmaking Offices in Bangor are inadequate to meet the demand.

[20] After the conclusion of the evidence called by the Applicant, Mr Fee QC indicated he wished to make an application that Toals had failed to lay before the court sufficient evidence of inadequacy such as to require Ladbrokes to answer it and thus I should dismiss Toals application at that stage.

[21] Both Mr McCollum QC and Mr Fee QC made written and oral submissions in respect of Ladbrokes application that there is no case to answer.

Election

[22] Before dealing with the application of no case to answer Mr McCollum QC invited me to consider refusing to make a ruling unless Ladbrokes elected to rely on the application alone and thus whatever the outcome of my ruling they could call no evidence of their own.

[23] While Mr McCollum QC conceded I have an unfettered discretion as to whether to put Ladbrokes to such an election he suggested there was a risk that if Ladbrokes were not put to their election and then Toals application for a Bookmaking Office Licence was refused any retrial following a successful appeal would lead to greater delay and expense.

[24] Mr Fee QC placed reliance on the decision of Gillen J in *Philip Russell Limited v DW Retail* [2013] NIQB 56 where the judge noted that, while the court does retain an unfettered discretion as to whether to put an Objector to their election:

> "courts should tread carefully before imposing such a

> stricture in circumstances where there is a statutory obligation on the court to make certain findings without which the Plaintiff cannot succeed." [para 35]

[25] In a licencing case such at this, the court has been given an inquisitorial role whereby it must satisfy itself that all of the statutory preconditions have been met, absent of which an Applicant cannot succeed even in the absence of objection by anyone. In such a case I do not consider it appropriate to exclude evidence which may be relevant to the issue of adequacy that I must determine.

[26] To that end I therefore do not put Ladbrokes to their election.

Ladbrokes application for a direction of no case to answer.

[27] It is common case that the test for an application that there is no case for an objector to answer is that set out by Carswell J in *O'Neill v Department of Health and Social Services* (No2)[1986] NI 290 where at 292(a) he said:

> "The issue at this stage of the case is whether there is any evidence upon which a reasonable jury, consisting of persons of ordinary reason and firmness, could if properly directed find in favour of the plaintiff."

[28] Therefore, in the instant case the question for the court to determine at this stage is whether there is any evidence upon which the hypothetical jury, consisting of persons of ordinary reason and firmness, could, if properly directed, find in favour of the Toals that the four existing Bookmaking Offices in Bangor are inadequate to meet the demand.

Inadequacy

[29] A number of both first instance and appellate decisions on this issue of inadequacy were opened before the court. These do provide considerable assistance in determining the relevant principles in relation to inadequacy in licensing cases.

Restrictive nature

[30] Since the coming into force of the 1957 Act legislation in regard to the grant of a Bookmaking Office Licence is restrictive in nature.

[31] When considering inadequacy in the context of the 1957 Act Gibson LJ said in *McCartan v Banbridge DC* [1984] 3 NIJB:

> "The general atmosphere of the Act is that it is designed to secure that there should generally be an adequate number of licenced offices to meet the need but that the number should be no more than adequate."

[32] In *McCartan v Finnegan & others* [1994] NI 132 Hutton LCJ said in the context of the 1985 Order:

> "….art 12 of the 1985 Order is intended by Parliament to be restrictive in its effect…"

[33] In *Re Hughes' Application* 1997 [NI] 133 the Court of Appeal said this theme of restriction is:

> "of particular importance in relation to the question of adequacy."

The court went on to say:

> "The terms of Article 12 (4)(j) are mandatory; "a court shall… refuse an application…unless it is satisfied that the number of offices … to meet [the] demand is inadequate." The licensing court must therefore refuse a licence unless it has been satisfied by the evidence adduced that there is inadequate provision of bookmaking facilities for the locality. This is not less than a condition precedent on the exercise of the court's power to grant a licence. In my view, Article 12(4)(j) requires the court to be satisfied at the time of granting the application that the number of licensed offices is inadequate."

Objective test

[34] The objective nature of the test of inadequacy was expressed by McGonigal J in *Magill & another v Bell & others* [1972] NI 159:

> "In my opinion the test of adequacy is an objective test, viewing the character of the area as a whole and having regard to the number of persons in that area, the number of existing licensed premises and, indeed, in some instances, the transient persons who may be entitled to consideration when the adequacy of the facilities is being considered. It is, in a sense, the sort of test a planner would adopt in determining the potential requirements of an area. Examples can be seen in New Town and redevelopment areas where provision is made for the siting of certain types of premises having regard to the area and the proposed development."

Adequacy being the number of premises

[35] The test that courts must apply is the inadequacy of the number of premises.

[36] In *Stewarts Supermarkets Ltd v Sterrit & others* [1985] NI 159 at 168 Hutton J said:

> "… I consider that the primary duty of the court is to apply the test stated in the statute, which is whether the number of off-licences in the vicinity of the premises is inadequate, and not to apply the test whether the proposed off-licence is reasonably required by the public…"

[37] Similarly, in *McCartan v Finnegan & others* [1994] NI 132 the Court of Appeal said:

> "We are of the opinion that the licensing courts should concentrate on the adequacy of the number of bookmaking offices available in the locality as the paramount consideration."

Suitability and convenience

[38] In *McCartan* the Court of Appeal approved the approach of Gibson J in *Hunt v Magill* [1974] NI 328 where the judge said:

> "…. I do not regard the number of off-licenced premises as inadequate merely because it is not easy to park near the existing premises nor because a short walk for some in involved. The statutory test in inadequacy of numbers, not suitability or convenience, though the two are not always entirely separate."

[39] Thus, while mere suitability or convenience is not proof of inadequacy these are factors the courts will be alive to in its investigation.

[40] In *F A Wellworth & Co Ltd v Philip Russell & Co* [1997] NI 175 Girvan J said:

> "For my own part, in approaching the question whether the existing number of licensed premises are adequate in any given vicinity, the court must take into account whether they are adequate: (a) to meet the reasonable requirements, shopping patterns, expectations and trends of the purchasing public resorting to the relevant area…."; and (b) to ensure a proper competitive supply to those

> coming into the area, bearing in mind the disfavour shown to the law to restraints in the normal development of trade."

Fluid nature of inadequacy

[41] In *F A Wellworth & Co Ltd v Philip Russell & Co* [1997] NI 175 Girvan J considered the fluid nature of inadequacy when he said:

> "The concept of inadequacy is a flexible one and begs the question, adequate for what
> …..
>
> The trend of the authorities indicates that in determining adequacy the court must ask the question whether the existing facilities adequately serve the demand in the relevant vicinity. What the shopping public come to demand may change and evolve with for example, changes in shopping patterns, changes in working hours and practices, and so forth. Adequacy and demand are thus not static."

The evidence of inadequacy called by the Toals

[42] Toals called three witnesses namely, Gerry Hamill, Declan Cosgrove and Lauren Toal.

Gerry Hamill

[43] Gerry Hamill, an experienced chartered architect, gave evidence about the existing offices owned by Toals in Bangor and the proposals for the Quay Street premises.

[44] He noted that Toals Mill Row office was dated when compared both with Toals other offices in Bangor and their plans for the Quay Street premises. He highlighted certain issues with the physical state of the Mill Row building and various reasons why modernising it would be problematic.

[45] He also gave evidence as to his familiarity with the various Bookmaking Offices in Bangor. He suggested while it was only on Grand National day when he had seen an overflow of customers he had observed reasonable crowds in both Toals Dufferin Avenue and King Street premises on other Saturdays. He conceded he had not seen these premises full to capacity.

Declan Cosgrove

[46] Declan Cosgrove was called by Toals as an expert witness. His expertise arises out of his experience over many years in numerous Bookmaking Office licence applications.

[47] Mr Cosgrove submitted a written report dated November 2019 and gave oral evidence.

[48] On the issue of inadequacy, Mr Cosgrove suggested, in evidence that was not challenged, that the last census in 2011 showed a population growth in Bangor in the preceding ten years of 3.4% and a further one of 1.5% of those on the electoral roll between 2014 and 2019.

[49] He accepted that Bangor's commercial centre had suffered in recent years but that regeneration was its hope.

[50] Mr Cosgrove had conducted visits to the various bookmaking offices in Bangor. This was at a time when the Bank Lane office was still open. His visits had been on weekdays and he recalled that he had found the offices neither empty nor crowded but rather comfortable.

[51] When pressed on the impact of on-line gambling on the amount of business transacted at bookmaking offices he accepted that this will have had a detrimental effect.

Lauren Toal

[52] Ms Toal is a licenced bookmaker and a director of the Applicant company.

[53] She described to the court a general trend in Bookmaking Offices away from a spit and sawdust type environment to a modern one. She suggested this was in part driven by more women now frequenting Bookmaking Offices and seeking premises of a higher specification located in safer areas.

[54] In this regard she gave evidence of renovations carried out to Toals offices in Bangor at both Dufferin Avenue and King Street to meet this demand.

[55] She gave evidence that both Toals former bookmaking office at Bank Lane and its existing one at Mill Row were in unsatisfactory locations with internal physical constraints which would prevent their modernisation. Her evidence was that neither location had the potential to be altered so as to overcome their deficiencies.

[56] In respect of Bank Lane Ms Toal denied Toals had deliberately sought to fail to maintain it and allowed it to run down to improve its prospects of success in this

application. She gave evidence that, prior to its closure, the Bank Lane offices had not been opening in the evenings as the other bookmaking offices could meet the demand.

[57] In respect of Mill Row, she said that it was Toals intention to close the Mill Row office just as they had done with the one at Bank Lane.

[58] Ms Toal was enthusiastic about the location of the Quay Street premises being on the high street location where members of the public would pass by. This was the type of location Toals preferred to see its bookmaking offices located and shethus accepted that this application was an attempt to open an office at just such a preferred location.

[59] Ms Toal said that, in general, the business conducted in bookmaking offices bears a degree of correlation with sporting fixtures. She said that in relation to the existing bookmaker's offices in Bangor they would be overcrowded on Grand National day but not otherwise. She noted this was the same for all bookmaking offices in other places.

[60] She described the modern offices owned by Toals in Bangor, namely those at Dufferin Avenue and King Street as steady and busy shops where one might be busy in a morning and the other busy in an afternoon. She gave evidence that she has seen queues in these shops.

[61] Ms Toal took issue with the evidence of the expert Toals had called, Mr Cosgrove, as to the effect of on-line betting on bookmaker's offices. She denied that the advent of on-line betting had resulted in a downturn of customers frequenting their offices. She suggested customers sought the social benefits of coming into an office. While Ms Toal said the records of the company would support her contention no such documentary evidence was produced to the court.

[62] It was put to her in cross-examination that applicants for Bookmaking Office Licences sometimes produce Betting Slips as a way of demonstrating the volume of business offices are handling and it was therefore telling that she had not produced such slips. Ms Toal suggested that if such slips were produced they would have to be treated with caution as changes now allow for multiple bets to be made on one Betting Slip.

[63] Where Ms Toal did agree with Mr Cosgrove is that Bangor's commercial heart has suffered in recent years and is not as busy as previously.

Judicial Inspection

[64] At the invitation of both Toals and Ladbrokes, I inspected the four existing Bookmaking Offices in Bangor, and the exterior of the former Bookmaking Office in

Bank Lane. I did so in the absence of the parties in the early afternoon on a weekday. I consider this would be representative of mid-week betting.

[65] All four existing bookmaking offices had customers making use of the premises.

[66] With the exception of premises owned by Toals at Mill Row, Bangor, all of the premises were modern in nature and in prominent locations.

[67] My inspection added nothing to the evidence I had already heard in court save that it provided a picture to the words spoken.

Discussion

[68] As noted above, prior to this application being heard, Toals had closed its premises at Bank Lane and surrendered its licence to the court. Despite its closure the Bank Lane premises featured large in the case.

[69] Toals sought to suggest the fact that there are now only four bookmaking offices in Bangor when, for many years, there were five and that this was of importance when considering inadequacy.

[70] Ladbrokes however took issue with any suggestion that the reduction in the number of Bookmaking Offices caused by the closure of Bank Lane creates a presumption of inadequacy.

[71] They also suggested that Toals had effectively acted in bad faith by doing little, if anything, to improve or even maintain the Bank Lane offices leading to its eventual closure in an effort to improve their chance of success in obtaining a licence for the Quay Street premises.

[72] While I do not find Toals acted in bad faith in relation to the closure of the Bank Lane premises I do not accept that its closure creates a presumption of inadequacy. If Toals are to succeed in this case they must satisfy the court by way of evidence that there is inadequacy.

[73] The need for a court to determine inadequacy in a locality afresh when dealing with each application before it was emphasised by the Court of Appeal in Hughes when it said:

> "inadequacy of provision must be established when an application for a new licence is made even if a bookmaking office in the locality has recently closed. Inadequacy of provision is not to be assumed by reason only of such closure."

[74] In relation to Bank Lane, while I do not regard its closure as creating a presumption of inadequacy, it seems to me to be obvious that those customers who traditionally frequented the Bank Lane offices will now be making use of the remaining four offices in Bangor. That having been said I note the evidence of Ms Toal who described Bank Lane as a "quieter" office and agreed with Mr Fee QC that not many customers frequented it.

[75] Mr McCollum QC urges me to go further than considering inadequacy on the basis of there being four offices in existence by discounting from my considerations the somewhat dated office at Mill Row. This argument does not find favour with the court. Mill Row may well be of a different style and in a different type of location from the other three bookmaking offices but it nevertheless remains a functioning one which Toals continue to represent at renewal as one suitable for the carrying on of business.

[76] The determination of inadequacy will therefore be made with the court noting the closure of the Bank Lane offices but with four offices remaining open for business.

[77] Mr Fee QC says the court ought to put store on the failure of the Applicant to lay before it evidence of inadequacy in the way this had sought to be established in previous cases.

[78] Mr McCollum QC cautions the court to avoid elevating the words of Judge Rowland QC in *Fox v McGranghan* [1990] unreported, that if:

> "the existing facilities are not sufficient to cope with the demand then it follows that the number of offices for the time available is inadequate."

to being the statutory test.

[79] He describes Ladbrokes approach to the issue of inadequacy as being a "pre-historic" one and instead urges the court to take a modern "holistic approach."

[80] The Applicant can of course choose to bring whatever admissible evidence it wishes on the issue of inadequacy leaving it to the court to determine whether it is sufficient.

[81] On the issue of inadequacy, beyond the effect of the closure of Bank Lane noted above, the evidence that was given on behalf of the Applicant was that the population of Bangor by two measures has grown in recent years, albeit to a limited extent. That having been said there was an acceptance that the town centre of Bangor was not as busy as it previously had been. The combined effect of some growth in population but a decline in town centre activity are matters the court takes into account, one telling to some extent in the Toals favour and the other against.

[82] While Ms Toal suggested the advent of on-line betting had not adversely affected the business of bookmaking offices this was at odds with Toals expert evidence given by Mr Cosgrove. In this regard the court prefers the evidence of Mr Cosgrove.

[83] The evidence on behalf of the Applicant is that today many customers demand a modern style of bookmaking office in a primary location. The court has no difficulty in accepting this proposition and indeed recognises that the suitability of premises can be a factor when considering inadequacy. However, of the four bookmaking offices in Bangor, three are modern and in primary locations.

[84] At this stage I am required to apply the test set out by Carswell J in O'Neill. Based on this test I am not satisfied there is any evidence upon which the hypothetical jury, consisting of persons of ordinary reason and firmness, could if properly directed, find in favour of the Toals that the four existing Bookmaking Offices in Bangor are inadequate to meet the demand.

[85] I therefore accede to the application of Ladbrokes for a direction and I dismiss the substantive application of Toals.