

JERSEY / JUDGMENT

# Licensing Assembly [2018]

## JRC 240 (20 December 2018)

[2018] JRC 240

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[2018] JRC 240 [ New search ] [ Help ] Licensing Assembly - two applications made on 20 December, 2018 - reasons for decisions. [2018]JRC240 Licensing Assembly (Samedi) 20 December 2018 Before : Sir William Bailhache, Bailiff, and Jurats Nicolle, Crill, Olsen, Blampied, Thomas and Pitman. reasons for decisions the bailiff: 1. Two applications made to the Licensing Assembly on 20 th December, 2018, were reserved for further consideration. These decisions are now given:-

- (i) BWBS Limited 2. BWBS Limited applied for the transfer of a First Category Taverner's Licence in respect of the View Bar, Fort Regent Leisure Centre. The applicant applied at the same time for an extension of the ambit of the licence to cover two additional service bar areas that would be used only for concerts and shows in Fort Regent. These two areas are in the concourse adjacent to the Rotunda. The current position is that the licence holder in respect of the View Bar has applied on each occasion an event takes place for a special permit from the Bailiff's Chambers pursuant to Article 89(2) of the Licensing (Jersey) Law 1974 ("the Law"). 3. The purpose of the application to extend the ambit of the licence was to save time, cost and inconvenience in obtaining the transfer permits, and the applicant considered that a permanent arrangement if permissible would be better for all parties. 4. The application was unanimously approved in both respects at the Parish Assembly. 5. The transfer of the existing First Category Licence in respect of the View Bar is approved. The application to extend the ambit to cover the additional bar service areas in the concourse is however not approved and we now give our reasons. 6. Before going to the other Articles in the Law which are relevant to this application, we note the terms of Article 92, which permit the Assembly, in relation to premises including Fort Regent to vary the permitted hours, to limit the area in respect of which the licence applies, to vary any of the general conditions relating to on-licences specified in Article 12 and to attach such conditions having regard to all the circumstances of the case as seemed desirable. The Law charges the Assembly to have regard to any recommendations made by the Minister assigned responsibility for the

administration of Fort Regent if this Article is to be used. 7. Article 92(2) of the Law Article provides that:- " Before granting a licence to which this Article relates the Licensing Assembly shall have regard to any recommendations made by the Minister (if any) assigned responsibility for the administration of the place, or institution, referred to in paragraph (1)." [emphasis added] The Assembly notes that it has received no recommendations from the Minister in this case. 8. Essentially the applicant was asking us to grant a licence in respect of the concourse area for the two additional bars which would only sometimes be in effect. That causes a problem as to whether the areas in question are or are not licensed premises. By Article 1(1) of the Law, "'licensed premises" means, subject to paragraph (3), premises in respect of which a licence issued under any of the provisions of this Law is in force". 9. Either the premises are licensed or they are not. It seems to us to be impossible to construe the Law so as to mean that premises can be both licensed and not licensed - the whole purpose underlying Article 89(2) for special permits assumes that the permit is granted in respect of premises which are not licensed and it is this Article which provides for alcohol to be sold on a temporary basis from premises which are otherwise not licensed. 10. It follows that this application could only succeed if the two concourse areas in question were permanently part of the licensed premises. The question then arises as to whether Article 92 is wide enough to permit the Assembly to grant this application. 11. The Assembly is told from time to time that the Law is outdated and needs to be modernised, and in some respects we do not have any doubt at all that that is true. Making proper provision for online sales is definitely one example where the Law does not meet modern needs, and it may well be that the current application is a similar example. However, in granting applications under the Law, the Assembly must do justice to the structure of the Law itself. 12. Here it is suggested that a public concourse over which the public come and go from time to time without let or hindrance once they are within Fort Regent, save during events, should permanently be regarded as "licensed premises". Even if we were to vary the general conditions in relation to on-licences, Article 6(9) requires the Assembly to have regard to the suitability of the premises for the conduct of the business in respect of which the licence is granted and in the present case there are really two objections to what is proposed. The first is that there is no definition of the licensed premises. We were provided with some plans which are in our view not adequate for delineating which part of Fort Regent is licensed and which part is not, albeit we have a general idea as to where the service bars would be put as and when an event is taking place. The second objection however is that these premises would be licensed at all times if licensed at all, and if we were to lift the general conditions of on-licenses under Article 12 as has been proposed, we would have to have some mechanism to reinstate those general conditions as and when an event was taking place which required the use of the licence. No such mechanism exists in the Law other than the special permit procedure under Article 89. 13. For these reasons we do not think that the application for an extension of the licence in these circumstances proposed works under the current Law, and we refuse this part of the application. (ii) Casual Dining Bidco Limited 14. The second reserved application was an application by Casual Dining Bidco Limited for a provisional First Category Licence in respect of the Portside, Restaurant and Outside Seating

Area at Elizabeth Harbour. The applicant company already holds a First Category licence in respect of the kiosk and concourse, which would be surrendered if a blanket licence as permitted under Article 92 of the Law was granted. The application was in respect of a provisional First Category licence. On 22 nd June, 2017, there had been applications for First, Third, Sixth and Seventh Category licences to cover the various areas within the Harbour terminal, but the Assembly had on that occasion declined to grant the licences as originally sought, granting only a First Category Licence, adapted in accordance with Article 92 to reflect the nature of the premises. A similar approach has previously been taken in relation to the Airport building. 15. We note the Assembly has received no recommendations from the Minister pursuant to Article 92(2) of the Law. 16. Reports from Environmental Health suggest that the premises will be suitable for the grant of a licence once the current building work has been completed. Similarly, provided that the works described in the Fire report dated 4 th December, 2018, are completed, the Fire Service considers that the premises will be suitable for the proposed use. 17. Unlike the position in relation to Fort Regent, the Assembly is satisfied that the licensed premises here can be adequately defined and grants the licence subject to the following conditions:- (i) In addition to the requirements of paragraphs 5 and 6 of Article 8 of the Law, the holder of the licence shall transmit to the Judicial Greffier (who shall forward to the Attorney General) the certificates of the Chief Fire Officer, the Chief Public Health Inspector and an architect to the effect that the construction of the premises has been carried out to their satisfaction, together with a letter from the Ports of Jersey stating that the licence holder retains the authority to operate within the licensed area and the Attorney General shall present the same to the Inferior Number of the Royal Court which, if satisfied with the certificates provided, shall confirm the said licence. (ii) The number of persons permitted to be in those areas of the premises available to the public shall be limited to such number as the Inferior Number of the Royal Court (which is hereby authorised in that behalf) may determine in the light of the recommendation of the Chief Fire Officer and the Chief Public Health Inspector, the lower of the two figures being chosen in that regard. (iii) The licence shall apply only to the area of the said premises described on the plan produced to the Assembly on 20 th December, 2018, as "the licensed area". (iv) That in respect of on-licence sales of alcohol, Article 28 shall be dis-applied to the extent that the sale of alcohol to the general public and holders of a valid boarding pass for consumption on the premises shall cease at 1:00am, whereupon the general public shall be entitled to remain on the premises until 1:30am and the holders of a valid boarding pass shall be entitled to remain on the premises until the departure of their seafaring vessel. (v) The sale of alcohol in closed vessels for consumption off the premises' outlets in the areas of the Elizabeth Harbour Terminal accessible to the general public and located before the departures security check-point shall be authorised only during the permitted hours for licences of the Sixth Category. (vi) If any door security staff are employed, they shall be members of the Jersey Door Registration Scheme. (vii) Articles 12(1)(a), (b), 22, 28 and 29(1) of the Law are dis-applied. (viii) The licence granted to Casual Dining Bidco Limited on 21 st June, 2018, for the licensed area pertaining to that licence must be abandoned before this provisional licence is confirmed. Authorities

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