

JERSEY / JUDGMENT

Licensing Assembly [2019]

JRC 043A (21 March 2019)

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[2019] JRC 043A [New search] [Help] Licensing Assembly - two applications made on 21st March, 2019 - reasons for decisions [2019]JRC043A Licensing Assembly (Samedi) 21 March 2019 Before : Sir William Bailhache, Bailiff, and Jurats Crill, Olsen, Blampied, Averty and Sparrow Reasons for decisions the bailiff: Application by Seedee Jons Limited 1. Seedee Jons Limited applied for a Sixth Category licence in respect of its premises at 47 Halkett Place, St Helier. The Assembly refused the application on 21 st March, 2019, and reserved its reasons. This judgment contains those reasons. 2. The application was presented by Mr Christian Le Cornu, a director of the company. He told the Assembly that the application for a licence was to enable the company to sell gifts to customers which contained alcohol. These would obviously be most popular on Valentine's Day, Mother's Day, Father's Day and at Christmas, but there might be other occasions and accordingly a restriction by reference to the time of year during which the licence would be operative would not work as far as the applicant was concerned. He confirmed that the whole premises from which the business was currently operated would be licensed if a licence was given. 3. Although it was first described as an opportunity to sell gift packs including miniature and 50cl bottles of alcohol, it later became apparent that it would be alcohol of all kinds being sold, perhaps in full bottles. It is perhaps worth emphasising that point because in the application to the Parish Assembly, the records show that the proposer explained that the purpose of the application was only to sell gift packs that contained small amounts of alcohol. 4. The business conducted by the applicant is a broadly based retail shop, although concentrating on musical products. The application was approved unanimously by the parish assembly and on behalf of the Connétable, the Procureur told us that the parish supported the application provided that it was granted for the purposes of the sale of gift packs only. 5. Article 6(9) of the Licensing (Jersey) Law 1974 provides that the Licensing Assembly, in deciding whether or not any application should be granted, shall

have regard to the interests of the public in general, to the nature of the business conducted or to be conducted on the premises sought to be licensed and the suitability of those premises for the conduct of that business, and might grant a licence different from that for which the application is made. 6. The Assembly found it difficult to reach the conclusion that to grant this licence would be in the interests of the public in general. It noted that similar natured licences have been granted to large shops in the Island in the past, and to some smaller shops - and the applicant's premises would fall into the latter category. In so far as licences had previously been granted to some of the smaller shops, the Assembly considered that perhaps it might be difficult to justify the grant of such licences now, particularly given the growing awareness of the extent of the abuse of alcohol in the Island. We mention that only to indicate that there is a change of policy in relation to applications of this kind. 7. The Assembly considered that there were a number of outlets already licensed where goods of this kind could be acquired and we did not consider that it was in the public interest that this outlet be licensed. In particular we took the view that the applicant in this case inevitably had a large clientele of young people and while we emphasise that there is absolutely no criticism of the applicant or its staff in this respect as some of its products undoubtedly require proof of age because they are not permitted to be sold to those under the age of 18, it remains a fact that a substantial clientele of younger people would be exposed to alcohol sales which might be considered undesirable. 8. We also took into account that the application clearly widened during the course of Mr Le Cornu's address to us. We do not say this as a criticism of him and certainly it is not expressed to indicate that he was seeking to pull the wool over the eyes of the Assembly. We mention it because it rather emphasised to us that there was a lack of clarity as to why the licence was requested. Had the application been limited to the sale of gift products containing miniatures only, it seemed to us that would have been more consistent with the general nature of the applicant's business. 9. We had difficulty in considering exactly how any condition attached to the licence, if it were to be granted, should be framed. The usual condition in relation to Sixth Category licences is that the sale of alcohol be ancillary to the main business conducted from the premises. The word "ancillary" in relation to a particular service is generally regarded as meaning a service which provides support and/or is auxiliary to or an accessory to some other service. It is very hard to see what connection a retail off-licence has in reality to the business which was described to us by the applicant. 10. The Assembly would be willing to reconsider such an application in the future if there is more clarity about exactly what would be sold and how it relates to the existing business. We did not feel satisfied on the information presented to us on this occasion that we had a sufficient basis to reach the conclusion that the grant of a licence was in the public interest. Cineworld Cinemas Limited 11. On 22 nd March the Assembly received from Cineworld Cinemas Limited an application to vary the Seventh Category Entertainment licence held by the company in relation to the premises known as Cineworld on the Waterfront at St Helier. The current Seventh Category licence applies in respect of the bar and the VIP boxes at the rear of Screens 1 and 10 and the proposed variation would extend the Seventh Category licence to each of the ten

auditoriums in their entirety, and also to the foyer. The proposed occupancy was put at 750 persons in respect of the foyer and differing numbers of persons in respect of Screens 1 to 10, depending upon the size of each of those auditoriums. The basis of the application, which was put before us by Mr Mark Whittey, the Operations Director of the applicant was that there had been changes in the cinema business of various kinds which meant that it would be in the public interest to grant these variations. In particular, it was now the case that a number of live productions, whether of opera, ballet or other artistic genres were now filmed and broadcast live and patrons often wanted the facility of being able to enjoy an alcoholic drink while watching the performance - just as they might well be able to do so if they were watching it live. It was not an application limited to those circumstances however, because there seemed no reason why those simply enjoying other types of film should not have the facility to watch the film and enjoy an alcoholic drink at the same time. This was common practice in other Cineworld outlets up and down the United Kingdom and had been shown to be an offering which the public appreciated. 12. The Assembly accepted completely the basic premise of the application but adjourned it for further consideration by the applicant in relation both to the number of screens to which the licence might be extended and to the foyer. We were concerned that by licensing the foyer, a very large public area would have an entertainments licence which was in fact separated from the entertainment which was being provided. Furthermore, the nature of the Cineworld complex is that the foyer area often is crowded with young people. We appreciated that the Licensing Unit supported the application, but we nonetheless took the view that the applicant had not shown us that the extent of any supervision of the foyer area would sufficiently reduce the risk of young people having access to alcohol through their peers or through others who were of age. 13. We were told by the applicant that the proposal was that alcohol should be available in the same serving area that provided tickets for the different films and/or popcorn and other merchandise. That carries the implication that those purchasing alcohol will not necessarily be entering the cinema auditorium at all. It may be that the price at which the alcohol is sold would be a deterrent, and also that it would be possible to restrict the sale of alcohol to those who are able to produce a ticket to enter the auditorium, in similar fashion to duty free shopping at airports; but we were generally not satisfied that these protections would be sufficient given the predominantly young clientele, many of whom are underage, on the premises. In our view, while there is no objection to the licensing of the auditoriums, the sales of alcohol ought to take place once patrons have passed through the check-in desk which is operated to ensure that those passing that desk have a ticket to enter a particular auditorium. 14. There are other difficulties, however. As we understand it, the premises are open daily. If the intended sales area located at the tickets and food sales counters were licensed there would need to be some form of process to close off the sales area because otherwise there could be a breach of the permitted hours under Article 51 of the Law

- most notably on Sunday afternoons. The present position (having only the first floor mezzanine bar area and the VIP Screens licensed) allows the rest of the premises to remain open over the Sunday afternoon period. If Cineworld maintains the application, it would appear that the premises as a whole would have to close during part of the afternoon on any Sunday and we are unclear whether the applicant is aware of this difficulty. 15. Furthermore, although the applicant received support from the Parish, there appears to be no local market research to indicate that local parents would be happy for their children (in some cases unattended - such as those in their mid-teens) to be in the same cinema screen with someone unknown to them openly drinking alcohol. If the Assembly was willing to extend the licence to cover the ground floor screens it may be necessary to consider a restriction of drinking in the Screens to those Screens showing an 18+ movie (ie a condition with wording to the effect: that the consumption of alcohol within the licensed ground floor Screens shall only be permitted on such occasions when there is the screening of an adult rated movie, namely an 18+ movie). If this application comes back as we suggest, the Assembly will need to be addressed on this issue. 16. For this reason we resolved to adjourn the application for up to 12 months. Cineworld are able to bring the application back to us with further information or proposals which meet the concerns which we have set out and the application will be further considered then, if the company so desires. Authorities Licensing (Jersey) Law 1974 Page Last Updated: 04 Apr 2019 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: https://www.bailii.org/je/cases/UR/2019/2019_043A.html

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