

JERSEY / JUDGMENT

Licensing Assembly - application by Terre D'Italia Limited

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Licensing Assembly - application by Terre D'Italia Limited - reasons for decision [2019]JRC126 Royal Court (Samedi) 4 July 2019 Before : Sir William Bailhache, Bailiff, and Jurats Crill, Austin-Vautier, Averty, Fisher and Sparrow Reasons for decision the bailiff: 1. This is the written decision of the Assembly in relation to an application by Terre D'Italia Limited for 1st and 3rd Category licences under the Licensing (Jersey) Law 1974 ("the Law") in respect of the ground floor of 6 Caledonia Place, St Helier ("the premises"). The application was presented by Ms Katya Ischenko, a director of the company. The application was considered at the parish assembly where the 1st Category licence was approved by 6 votes to 2 and the 3rd Category licence application was approved unanimously. 2. The applicant currently holds a 6th Category licence in respect of the premises subject to the conditions that the number of persons permitted to be on the premises shall not exceed 60, including members of staff, and that the consumption of alcohol on the premises by clientele shall only be permissible in the "tasting room" where such alcohol is provided at no charge and for the purposes of tasting the product with a view to purchase. The Assembly has been provided with a plan of the premises and with photographs showing how it is currently laid out. There is a sales area with serving counter and seating area to the rear, a staff kitchen, staff toilets, storage/cloakroom and customer toilet. The proposal put to the Assembly was to permit aperitif hours during which the sales of Italian style cold nibbles and wine, with a very limited range of cocktails, might be available to the public on Thursdays, Fridays and Saturdays between 4.30pm and 8pm. The application was for 1st and 3rd Category licences because the proposed business was not intended to include the serving of food and drinks with waiter service, but rather to allow customers to take a plate with nibbles and drinks from the counter to stand in specially designed areas although some might simply enjoy a drink. The applicant has had discussions with the Jersey Development Company Limited which apparently was prepared in principle to rent a space to the applicant outside the licensed premises as an al fresco area. It was explained to us by Ms Ischenko that the 1st Category licence was required to enable customers not having a meal to buy a glass of wine from the counter rather than providing a waiter service. 3. The Fire Service report suggested a maximum occupancy of 40 persons and Environmental Health Department suggested that a maximum occupancy would be zero persons if a 1st Category Taverner's licence were granted, and 30 persons if a Restaurant licence were granted. That advice was given because there is only one single unisex toilet in place for patrons. If an additional water closet and hand wash basin were provided, Environmental Health recommended a maximum occupancy of 25 persons on a Taverner's

Licence. 4. The Assembly was advised by the applicant that a planning application had been submitted for a change of use, but no planning permission had yet been granted. 5. We were informed that what the applicant wanted to introduce was not straightforwardly within the terms of the Licensing (Jersey) Law 1974, or indeed the Planning and Building (Jersey) Law 2002 – namely to use the premises in this way for a few hours on only some days each week. 6. After considering the matter, the Assembly resolved to adjourn the present application until the sitting in September. If all the matters referred to below are dealt with prior to then, it may be possible to find a date for an Extraordinary Sitting of the Assembly before then. 7. The Assembly has long had a practice of not granting a licence under the Licensing (Jersey) Law 1974 until all Planning and other statutory approvals are in place and any refurbishment has been done. The only exception to that is where approval in principle for the use of premises in a particular way has been obtained, but the work in question has not been carried out, in which case a provisional licence may be sought under Article 8 of the Law. There are several reasons for the policy:- (i) Given that the Licensing Assembly and the Royal Court comprise the same people (Bailiff and Jurats) it is undesirable in principle to have the Assembly grant an approval in respect of particular premises and the same body of people later consider a possible appeal or judicial review, depending upon the executive body which is taking the decision, in respect of the same premises. (ii) The Licensing Assembly considers under Article 6(9) in relation to any particular application, the interests of the public in general and 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. It is undesirable that the Assembly should reach a view about the suitability of premises in circumstances when an executive body will later be considering the very same matter, albeit from perhaps a more technical perspective. 8. This being so, the fact that Planning permission is not yet through means that the Assembly cannot currently grant a permission for either of the licences applied for at the present time. It follows that the application must be adjourned. 9. The Assembly is conscious that there has been much discussion about a possible amendment of the Law or indeed the passage of a new law. Until that happens, the Assembly is constrained by what the Law actually permits. Within the four corners of the legislation, the Assembly tries to be as helpful as possible to applicants, subject to performing its functions as set out in the Law.

10. The applicant is right that a licence which covers only some particular times or days of trading is not currently contemplated in the Law, but nonetheless there are restrictions on trading hours which are frequently added to licences by conditions which are attached to their grant. What makes the present application more difficult is that the applicant desires a licence which enables it to open on an unscheduled basis, albeit there is a general working presumption that the licence would operate only Thursday to Saturday between 4.30pm and 8pm. This approach of course emphasises that once a licence has been granted by the Assembly, then it is there to be operated for all purposes within the Law, subject to any particular conditions which have been attached. If it is not possible to frame a condition which meets with sufficient particularity what the applicant wishes to achieve, the problem lies not with the Assembly but with the Law itself or indeed with the applicant who wishes to

do something which the Law does not contemplate.

11. These particular premises do not appear to the Assembly to be well suited to the grant of a 1st Category licence. The lack of sanitary facilities is certainly one basis for reaching that view. Whether the premises are suitable for the operating of a restaurant business is the subject of the Planning application for a change of use and we therefore do not comment any further on that aspect: but we note from Article 38 of the Law that if a restaurant licence were to be granted, then customers must either be taking a meal on the premises or if not doing so, then the principal purpose of the premises must be the business of a restaurant, and there must be waiter service with the alcohol consumed by persons on the premises if seated at a table. If the Planning authorities grant an application for a change of use so that the premises may be used as a restaurant, then it may well be that Article 38(2) remains a problem to the extent that persons who are on the premises but not taking a meal should only be provided with alcohol by waiter service and that is not on offer.
12. If amendments to the premises were to be made to create a new sanitary facility for customers – and a review of the plans suggest that that might be possible at the rear of the premises – then a 1st Category licence might be a possibility with an appropriate business plan.
13. In summary, the Assembly considers that the way forward may involve the following steps:-
(i) Before the Assembly considers the matter further, there must be Planning approval indicating the use for which the premises are approved which is consistent with an application for a liquor licence. (ii) If a 1st Category licence is to be granted, further advice will be needed from Environmental Health. One way of dealing with that matter might be for the preparation of a business plan which sets out some detail as to how the business model will be operated. It is possible that, depending on that model, Environmental Health may modify the recommendations put to the Assembly in relation to the possible grant of a 1st Category licence, or, equally possible that the Assembly may, notwithstanding the recommendations of Environmental Health, approve a 1st Category licence with a condition that the business be conducted in accordance with the business model. Whether this latter possibility might become an actuality will depend upon the nature of the business model and the consideration which the Assembly gives to it. (iii) A restaurant licence appears to be a possibility if the Planning authorities agree. Clearly any change in the sanitary facilities would no doubt assist in that connection. (iv) We note that even so there is no real definition at present of the extent of the tasting room where alcohol may be tasted with a view to purchase. We think that would be desirable if there is to be a mix of licences granted on these premises.

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14. The applicant indicated that the application did not naturally fall within the terms of the Law or the Planning Law, and we think that is so. Whether it is feasible, economically and in terms of Planning approvals – to bring the application within the relevant legislation will be a matter for the applicant to assess. In the meantime, the application for liquor licences is adjourned. Authorities Licensing (Jersey) Law 1974. Planning and Building (Jersey) Law 2002
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