

## THE HIGH COURT

NUTGROVE INNS LIMITED

## LICENSING APPLICATION

Judgment of Mr. Justice Barron delivered the 19<sup>th</sup> day of July 1984.

This application is in respect of premises to be constructed in the new Nutgrove Shopping Centre. It is to be the largest shopping centre in the Dublin area with a square footage of approximately 200,000. The premises which are sought to be licensed will be of the order of 6,500 square feet with an adjoining portion of 1,300 square feet. The applicant has established the statutory proofs, that is an increase of 25% in the population of the relevant parish over the relevant period, and the fact that he has a licence within the same parish, the holder of which has agreed to its being extinguished. In addition although it is not a statutory proof he has established that there is proper planning permission for the development.

The applicant controls a group of eight licensed premises which are well run. Most of them do a lounge and a bar trade and one at least and probably more do a cabaret trade. It is proposed to spend approximately £900,000.00 on the present premises.

The location of the premises is well suited to a licensed premises. It is the only designated area on the development plan for licensed

premises within that particular area; there is no housing within 200 yards and there has been a large increase in housing in the area over the last 20 years.

The applicant plans to run a licensed house for the local community and expects to obtain 50 to 60% of his trade from the immediate housing estates. He anticipates that he will obtain some of his business from the shopping centre and the balance will presumably come from outside the area. He recognises that the present trend in licensing trade is for later drinking. He expects approximately 80% of his off-licence trade to be from shoppers in the shopping centre. I am quite satisfied that the premises will be well run and in keeping with the aims of the developers of the centre. It is also material that the police have made no objection to the grant of the licence.

The application is supported by the local residents' association in the Holylands area. They want a local public house catering for their association members and wish to have it within easy walking distance. They say that existing facilities are inadequate and that it is hard to get seats together. These supporters all use the local public houses during the last hour of trading on any particular day. This seems to be the only time at which they do use such premises. They recognise that

drinking is a problem for teenagers in the district and that they have used the nearby open spaces for such drinking.

The application is opposed by both local publicans and by other local residents. Evidence has been given in respect of seven neighbouring houses, only one of which has less accommodation than would be provided by the applicant's premises. The evidence as to use of these premises and the crowding of them does not differ materially from that of those supporting the application. It is accepted that there has been a shift to later drinking hours and that it is only in the last hour or hour and a half of licensing hours that it may be difficult for people coming to their premises to get seats together. Many of these premises have expanded in the 1970's to meet the expected increasing demand resulting from the increased housing. This has been a mistake and upstairs lounges in particular are totally underutilised. Daytime trade is limited to portion of the premises and is sparse. Evening trade does not begin before 8.30 p.m. On Mondays it is small; on Tuesday and Wednesday probably for the last hour of trading and on the remaining days of the week for the last 1½ hours of trading. The pattern of closed parts of the premises is not identical. In three of the premises upstairs lounges only open at 8.30 p.m. or 9pm. whereas in one it only opens at the week-ends.

Save for the County Club which does a large cabaret trade and for which no figures were supplied there has been a pattern of fall in real turnover and lessening of staff employed. All these premises believe that they get a proportion of their trade - in some cases greater than in others - from the residential housing estates immediately adjoining the proposed premises.

The objection of the local residents is based upon teenage drinking which results in ugly scenes in the parks and in vandalism. They regard the proposed premises and in particular the off-licence which unlike the supermarkets will remain open during all licensing hours as an unwelcome facility which will draw even more teenagers to the area. Some objection was also raised concerning drunken driving. These objectors were satisfied that the facilities existing were adequate even in relation to obtaining seats together during the last hour or so of trading.

In dealing with these objections I must give weight to the views of the local residents. Of those who gave active consideration to the proposed premises and sought assurances in relation to it virtually all are in support. The opponents are acting essentially as individuals, though there is some evidence that many of these are employees of the County Club and that a belated organisation of such opposition emanated

from these same employees. I accept that the majority of locals either support the application or are indifferent to it either in the literal sense or because they do not see their views as being likely to be given any consideration. Those in support want also a community public house where they will see mostly people whom they know. The applicant has indicated that he will run such a house. They also assume that seats in groups will also be readily available at all times. Regrettably experience tells me that this would not be possible. The house will develop in accordance with the demand. With a totally unused car park for 1,000 cars available during the hours which are now the only busy hours, the business will develop to meet the requirements of those who can be guaranteed such parking. It must become anything but the sort of licensed house which the local supporters require.

The evidence satisfies me that there is no difficulty in meeting existing demand by the existing public houses. There will be a new demand from the shopping centre both from customers at the centre and from employees working there but the premises which are proposed are not being built just to meet such a demand. This is not intended as any criticism of the applicant for he would not be where he is today if he was unable to assess properly the potential of the site. The reality of this aspect of

the case is that although there has been a large increase in the population over the years the new and existing licensed premises have opened and expanded to meet the constant increase in demand. Even in good times these houses were more than sufficient to meet this demand. With the downturn in real demand over the last 3 to 4 years the surplus capacity has become very apparant. Even if this application could be seen to cater only for those living in its immediate vicinity it seems to me that the reason for supporting it is something which the 1902 Licensing Act was intended to prevent, that is a proliferation of licensed premises. I am satisfied that the number of existing premises in the neighbourhood is sufficient.

The evidence also satisfies me that the premises are inconvenient. There is the closeness of the park and the playing fields, the homes for senior citizens, and, most, importantly the teenage drinking problem which already exists and which could only get worse with all its attendant evils, some of which are already apparent. I am fortified in the decision which I have come to by two recent decisions, one by Mr. Justice Costello in T. Carey Limited and the other the President in Centennial Properties Limited. In the former of these cases, Mr. Justice Costello refused an application for a new licence on the grounds that the existin

licensed premises in the area already had a large unused capacity.

In the other case the President approached the matter as to inconvenience on the basis which I have followed but on slightly different facts.

In the circumstances I will refuse the application for the proposed licence.

*Henry Baron*  
25/11/54