[2005] IEHC 106

THE HIGH COURT
JUDICIAL REVIEW

[2003 No. 122 JR]

BETWEEN

KIVAWAY LIMITED TRADING AS ODEON BAR AND NIGHTCLUB

APPLICANT

AND

REVENUE COMMISSIONERS

RESPONDENTS

AND

THE HIGH COURT
JUDICIAL REVIEW

[2003 No. 123 JR]

BETWEEN

PAWNBEACH LIMITED TRADING AS 4 DAME LANE

APPLICANT

AND

REVENUE COMMISSIONERS

RESPONDENTS

JUDGMENT of Quirke J. delivered the 7th day of April, 2005.

By orders of the High Court (O'Donovan J.) dated 24th February, 2003, the applicants were given leave to apply by way of judicial review for orders of *certiorari* quashing decisions whereby the respondents refused to grant to the applicants licenses pursuant to s. 7 of the Excise Act, 1835 in respect of licensed premises at (a) the Old Harcourt Street Railway Station, 57 Harcourt Street in the City of Dublin (which is trading as "*The Odeon Bar and Nightclub*") and (b) 4 Dame Lane in the City of Dublin 2 (which is trading as "*4 Dame Lane*").
The applicants have also been given leave to seek certain declaratory and other reliefs additional and ancillary to the substantial reliefs sought.
Since the facts governing both applications and the grounds relied have been virtually identical and since the reasons given by the respondents for refusing to grant both licenses have been the same it has been agreed between the parties that the application bearing the Record Number 2003 No. 122 JR (Kivaway Limited) will be decided by this court on its facts and the determination of that case will govern the outcome of the application bearing the Record Number 2003 No. 123 JR (Pawnbeach Limited).

FACTUAL BACKGROUND

1. The applicant is the owner of premises comprising the former Harcourt Street Railway Station. It is situated at 57 Harcourt Street in the City of Dublin. The premises comprise a listed building of historic significance which is styled in a palladian neo-classical manner.
The building has been restored and adapted as a large licensed premise containing oak floors and period furniture and fittings.
The overall floor area of the premises is of the order of 10,000 square feet comprising: (i) 5000 square feet at ground level, (ii) 2,000 square feet at first floor level (with an additional terrace of 1,000 square feet) and (iii) an upstairs function room with a floor area of 2,000 square feet.
The ground floor can accommodate a stage at one end of the floor with seating in the balance which enjoys a full view of the stage.
The premises contain *inter alia* two large cinema screens. The bar is located at the rear of the building.
2. The applicant is the holder of the following licences in respect of the premises:

> (a) a full 7 day on-licence (pursuant to the provisions of Intoxicating Liquor Act, 1833 – 2003) for the sale of intoxicating liquor,
> (b) a licence (pursuant to the provisions of s. 51 of the Public Health Amendment Act, 1890 as amended by s. 3 to s. 33 of the Courts (Supplemental Provisions) Act, 1961) for public music and singing, or for other public entertainment of a like kind and,
> (c) a licence pursuant to the provisions of the Public Dance Halls Act, 1935 for public dancing.

3. By letter dated 24th September, 2002, the applicants solicitors wrote to the respondents indicating that the applicant wished to apply (pursuant to s. 7 of the Excise Act 1835) for a theatre licence in respect of the premises.
The letter enclosed very substantial documentation including a formal application for a theatre licence and comprehensive documentation outlining in detail (a) the nature of the premises, (b) the licences which attached to the premises, (c) details as to why the applicants regarded the premises as appropriate and suitable for use as a place of public entertainment, and (d) other written submissions explaining why the licence was being sought. Under the latter heading the applicant indicated that

it wished to capitalise on the business potential of the premises as a place of public entertainment and to compete more effectively with other similar entertainment venues.
A schedule was provided suggesting that the premises had been used on many earlier occasions for public entertainment performances.
4. By letter dated 4th October, 2002, the respondents sought additional information from the applicant arising out of a schedule of events supplied to the respondents be the applicant.
5. By letter dated 8th October, 2002, the applicant's solicitors replied enclosing a copy of the music and singing licence which attached to the premises and advised that; …*"We have sought our clients instructions in relation to the further information you required in relation the Schedule of Events …"*
6. Before such instructions had been sought or obtained the respondents by letter dated 14th October, 2002, advised the applicants that the respondents were*" … unable to issue a licence in this case."*
The letter continued ..

> "*Section 7 authorises the Revenue Commissioners to issue a licence in respect of "any theatre or place of public entertainment" the premises in question is a public house. A public house is not a "theatre or other place of public entertainment", consequently the Commissioners cannot issue a licence in respect of the same. In addition there is already a Spirit Retailer's on-licence attaching to the premises. One cannot hold two licences for the sale of the same types of intoxicating liquor in respect of the one premises and accordingly the Revenue Commissioners could not issue a s. 7 licence in this case even if the premises in question was "a theatre or other place of public entertainment".*

7. By letter dated the 30th October, 2002, the applicant's solicitors replied requesting that the respondents reconsider their decision or "*state with certainty the statutory basis or other precedent for each and all of the grounds of refusal set out in your letter of the October 14th…".*
8. By letter dated 22nd November, 2002, the respondents replied indicating that they had inspected the applicants premises and that:

> "*…it is clear from this inspection and from the material provided by you that the premises in question is a public house, is licensed as a public house and will continue to be licensed and operated as such should this application be granted. In the circumstances …the Revenue Commissioners are unable to issue a licence in this case for the reasons set out in my letter of the 14th October."*
> The letter continued *inter alia:*
> "*…in addition the Revenue Commissioners do not accept that one can hold two licences for the sale of the same category of alcohol for the one premises. This is implicit in the licence code. The legislature has created different categories of retail licences with distinct privileges and obligations many of which are mutually incompatible and has not provided that these licences can be held together. For example, in the case of an ordinary publican's licence drink may be sold to all comers provided they are sober and of age. In the case of a theatre licence, drink may only be sold to persons who have engaged seats for the performance. Likewise, the prohibited hours contained in the Intoxicating Liquor Act, 1927 apply to an ordinary publican's licence whilst an entirely different set of rules apply to a theatre licence under s.21 of the same Act. Both these sets of rules cannot operate in respect of the one premises."*

9. In affidavit sworn on the 9th May, 2003, Mr. John Ryan who is a Higher Executive Officer with the respondents averred *inter alia* that "*...no premises with a seven-day on licence has been granted a theatre licence. Both a seven-day on licence and a theatre licence has been issued in respect of "The Point". However I say and believe that the premises in respect of which the seven-day on licence has issued is separate from the premises in respect of which the theatre licence has issued."*
The evidence adduced has disclosed a difference of view between Mr. Ryan and Mr. Greene of the applicant as to whether the premises in respect of which a seven-day on licence has been issued in respect of "*The Point"* is separate from the premises in respect of which the theatre licence has been issued.
The "*publican's certificate"* in respect of *"The Point"* certifies that:

> "*…Point Exhibition Company Limited... is duly entitled to receive an ordinary excise licence ...for the sale of beer, cider and spirits by retail on the premises forming part of the premises know as The Point Depot … being more particularly described and delineated on plans lodged in court."*
> However the licensing maps which might have clarified this issue cannot be found.

10. By letter dated 17th April, 2003, Mr. Phelim Blake who is a Divisional F.O.I. liaison officer with the respondent furnished documentation to the applicant under the Freedom of Information Act, 1997. It included a list of seven premises which had been issued with wine-on licences and with theatre licences. All of the premises had held both licences simultaneously.
The evidence has also disclosed differences of view between the applicants and the respondents as to whether so-called "*dual licences"* (theatre licences pursuant to the Cork Improvement Act 1868 and *"publican's licences*" for the sale of

intoxicating liquor) have been issued in respect of two premises at Cork (Cork Opera House and Everyman Palace).

THE LAW

Section 7 of the Excise Act, 1835 provides as follows:

> "*It shall be lawful for the commissioners and officers of excise, and they are hereby authorised and empowered, to grant retail licences to any person to sell beer, spirits and wine in any theatre established under Royal Patent or any theatre or place of public entertainment licensed by the lord chamberlain or by justices of the peace, without the production by the persons applying for such licence or licences of any certificate or authority for such person to keep a common inn, alehouse or victualling house; anything in any Act or Acts to the contrary notwithstanding.*"

An excise licence under s. 7 of the 1835 Act is not renewable. It is subject to such annual excise duties as may be charged under the Finance Act. The holder of an excise licence granted under s. 7 of the 1835 Act, is permitted to sell intoxicating liquor upon the licensed premises within a period *"...beginning half an hour before the commencement of a performance in the theatre...and ending half an hour after the termination of such performance..."* (see s. 21 (2) of the Intoxicating Liquor Act, 1927).

In *D.P.P. v. Tivoli Cinema Limited* [1999] 2 I.R. 268, the word *"performance"* within the meaning of the section has been deemed to relate to:

> *"Entertainment provided by the management of the premises and for which the public has paid for admission. The playing of recorded music solely for the purpose of indicating an interval between the different parts of the entertainment would not be so regarded. Live music played by an advertised act being the purpose for which the audience has paid its entrance money would be a performance or entertainment within the meaning of... the section."*

Although the licence is described as a "*theatre licence"* the premises licensed may be either a theatre or an *"...other place of public entertainment"*.

Section 51 (1) of the Public Health Act, 1890 provides as follows:-

> *"For the regulation of places ordinarily used for public dancing or music or other public entertainment of the like kind the following provisions shall have effect namely:*
> *"(1) After the expiration of six months from the adoption of this part of this Act, a house, room, garden or other place, whether licensed or not for the sale of wine, spirits, beer or other fermented or distilled liquors shall not be kept or used for public dancing, singing, music or other public entertainment of the like kind without a licence for the purpose or purposes for which the same respectively is to be used first obtained from the licensing justice of the licensing district, in which the house, room, garden or place is situated...".*

Section 2 of the Public Dance Hall Act, 1935 provides *inter alia* as follows:

> *"(1) Subject to the provisions of this Act any person may apply to the Justice of the District Court exercising jurisdiction...for a licence (in this Act referred to as a public dancing licence) to use a particular place, whether licensed or not licensed for the sale of intoxicating liquor, ...for public dancing, and such Justice may, if he so thinks proper, grant such licence to such person."*

Section 14 (1) of the Public Dance Halls Act, 1935 provides that:-

> "(1*) Immediately upon the passing of this Act, section 51 of the Public Health Acts Amendment Act, 1890, shall cease to apply or have effect in relation to public dancing within the meaning of this Act."*

THE APPLICANT'S CASE

The applicant claims that the decision of the respondents which it seeks to impugn was invalid and unlawful and was based upon misunderstandings of law. It is contended that the decision was made on the following grounds:

> (1) That it is *"implicit in the licensing code"* that no person *" ..can hold two licences for the sale of the same category of alcohol for the same premises"* (see respondents' letter dated 22nd November 2002) and

(2) for that reason, the applicant's premises cannot come within the definition of a *"theatre or other place of public entertainment"* within the meaning of s. 7 of the 1835 Act.

> The applicant claims that the decision made is flawed and invalid because it has been made upon an erroneous legal premise.

THE RESPONSE OF THE RESPONDENT

The respondents contend that the applicant's premises do not come within the category of a *"place of public entertainment*" within the meaning ascribed to that term by s. 7 of the Act of 1835. They say that the applicant accordingly does not qualify as a person entitled to the grant of a licence under that section of the Act.

They argue also that the respondents are vested with the jurisdiction to determine whether the applicant's premises comprise a "*place of public entertainment"* within the meaning of the Act. They say that their determination on that issue may not be upset in the absence of evidence that it has been made unlawfully or irrationally.

The respondents also contend that no legislation has been enacted within the State which permits the simultaneous existence of two licences for the sale of the same category of intoxicating liquor to members of the public in respect of the same premises. They claim that practical considerations, combined with the absence of such legislation makes it "*implicit in the licence code ..."* that a full seven day on-licence for the sale of intoxicating liquor may not co-exist simultaneously with a theatre licence in respect of the same premises. Accordingly they claim that the grant of a licence to the applicant by the respondents was and is not warranted and that a licence cannot lawfully be issued.

CONCLUSION

It has never been argued that the applicant's premises comprise a *"theatre"* within the meaning of s. 87 of the Act of 1835. Before considering the application the respondents first had to be satisfied that the premises comprised a *"place of public entertainment"* within the meaning of the section.

I am satisfied on the evidence that on a date between 24th September, 2002, and 14th October, 2002, the respondents decided that since the applicant's premises had been *"clearly operated as a public house"* they could not be categorised as a *"place of public entertainment."* They reached that conclusion solely on the grounds that the applicant was then the holder of a full seven day on-licence in respect of the premises.

Mr. Connolly on behalf of the respondents has fairly and candidly acknowledged that the decision to refuse to issue a licence was made before the respondents had conducted any inspection of the premises and without any consideration by the respondents of material which the applicant wished to place before the respondents in support of the application. Subsequently, on the 7th November, 2002, an officer of the respondents inspected the premises. The additional information which the respondents had sought on the 4th October, 2002, and which the applicants wished to provide was never considered by the respondents.

In *Royal Dublin Society v. Revenue Commissioners* [2000] 1 I.R. 270 the Supreme Court (Keane J.), considered an application for relief of the kind sought in these proceedings. He observed (at p. 280) that:

> *"The activity which the applicant wishes to carry on, i.e. the sale of intoxicating liquor to the public, is regulated in these islands by a licensing code, stretching back over the centuries, of labyrinthine complexity. It is not, however an activity of so essentially anti-social a nature that of its nature it demands regulation to that degree and in other civilised societies, including many of the member states of the European Union, it is far less rigorously controlled. While the Oireachtas and its predecessors, as they were entitled to, have taken the view that it should be severely restricted, it would seem to me that, in the case of provisions such as that under consideration in the present case, a citizen who wishes to carry on the activity in question and appears to meet the requirements of the particular provision, should not be deprived of his right to carry it on because the authority from whom he must obtain the licence acts on an erroneous view of the law. That is a consideration of particular importance where, as here, the statute provides no appeal machinery and, unless the wrongful adjudication can be set aside by the High Court in the exercise of its inherent jurisdiction over inferior tribunals and bodies, the consequent injustice will remain without remedy."*

It follows from the foregoing that, if the decision made in the instant case by the respondents was based upon an erroneous view of the law, then this court has jurisdiction to interfere with that decision

The decision of the respondents in this case which is sought to be impugned is contained in the respondent's letter to the applicant's solicitor dated 14th October, 2002.

That letter expressly provides the following two reasons for the respondent's decision:

> "th*e premises in question is a public house*. A *public house is not a "theatre or other place of entertainment" consequently the commissioners cannot issue a licence in respect of the same"* and
> *"In addition there is already a Spirit Retailer's on-licence attached to the premises. One cannot hold two licenses for the sale of the same types of intoxicating liquor in respect of the one premises and accordingly the Revenue Commissioners could not issue a s. 7 licence in this case even if the premises in question was a "theatre or other place of public entertainment".*

No evidence was adduced in these proceedings suggesting that the respondents have ever made a reasoned, considered policy decision providing that no premises to which a seven day on-licence attaches can reasonably be considered a "*place of public entertainment".*

It was on the sole basis that a seven day on-licence attached to the premises that the respondents concluded that the applicant's premises comprised a *"public house"*. They concluded that, since the premises comprised a *"public house"* they could not, consequently, be considered a *"place of public entertainment"*. They declared that in consequence they could not lawfully issue the licence sought.
In addition to the seven day on-licence the applicant is the holder of (1) a licence for public dancing under the 1935 Act and (2) a licence for public music and singing under the 1890 Act (as amended).
In the *Royal Dublin Society v. Revenue Commissioners (Supra)* the Supreme Court (Keane J). observed at page 284 that :

> *"Counsel on behalf of the applicant indeed submitted that, once the District Court had found the pavilion to be a place of public entertainment, the respondents were automatically obliged to grant the theatre licence sought. I do not think it is necessary to go that far. The Intoxicating Liquor Acts constitute a separate and distinct code from the code of which the Act of 1890 forms part and the respondents are entitled to satisfy themselves in every case that, having regard to the appropriate criteria to which I have referred, the premises sought to be licensed are indeed a "place of public entertainment" within the meaning of s. 7 of the Act of 1835. No doubt, in practical terms, their task will be greatly simplified by the fact that the premises in question have not merely been granted all the relevant permissions by the local authority but in addition have been granted a public music and singing licence by the District Court and, by implication, designated a place of public entertainment by that court. But that is not to say that, as a matter of strict law, their jurisdiction is effectively pre-empted by the decision of the District Court."*

It was clearly within the jurisdiction of the respondents to determine whether the applicant's premises comprised a "*place of public entertainment"* within the meaning of s. 7 of the Act of 1835. That determination was not pre-empted by the earlier grant to the applicant of licences for public dancing and for public music and singing.
The respondents made their determination in this case (a) without any consideration of the fact that those licenses had been issued, (b) without consideration of additional materials which the respondents had sought and the applicant wished to provide and, (c) without any inspection of the premises directed towards establishing whether the premises could be deemed to come within the category of premises identified by the Supreme Court (Keane. J) in *Royal Dublin Society v. Revenue Commissioners* (Supra) In that case the court adopted, with approval, the principles laid down in *Allen v. Emmerson* [1944] K.B. 362 in relation to the construction of virtually identical statutory provisions.
Holding that the High Court had erred in law in applying the *ejusdem generis* rule to the construction of the words "... *theatre or other place of public entertainment"*. the court held that the application of the rule had led the High Court to *"... adopt what is clearly an unnecessarily restrictive view of the expression 'other place of public entertainment'. Specifically, it is quite clear that a place to which the public are admitted on payment of an appropriate charge - it may be even without charge - and where activities are carried on which could be broadly described as 'entertaining' is entitled to be described as a 'place of public entertainment'. To confine it to premises which resemble theatres in having designated seating areas for the accommodation of audiences who view particular spectacles over a limited period of time, usually a few hours, would only be appropriate if one were applying the ejusdem generis rule. Thus, exhibitions featuring particular trades or activities, whether it be motor cars, tourism or whatever, to which the public are admitted can appropriately be described as "entertainments": common sense suggests that they are attended by many members of the public who have no intention of buying any of the products or services on offer, but who find it a pleasantly diverting way of spending a few hours.*
That conclusion is unaffected by the fact that the premises may also be capable of being used for purposes which could not be described as 'entertainment'."

Section 7 of the Act of 1835 empowers the respondents to grant licenses where they are satisfied that particular premises can be designated as a" *theatre or other place of public entertainment…"*. In that context the words "*place of public entertainment"* must be construed so as to give the words used their common meaning (see *Anderson v Anderson* [1895] Q.B. 749 and *Allen v. Emerson* [1944] K.B. 362).
An applicant for a licence under s. 7 of the Act of 1835 is entitled to have his or her application considered fully and fairly by the respondents in accordance with the plain language which is used within s. 7 of the Act. One of the questions to be considered by the respondents will be whether the premises can be fairly described as a "*theatre or other place of public entertainment…"*. When considering an application the respondents should conduct an investigation or inquiry into that question.
The inquiry or investigation should be full and fair. In conducting their inquiry or investigation it is the responsibility of the respondents to provide applicants with fair procedures and to consider any material provided by such applicants. It is the responsibility of the respondents to consider all of the material which is placed before them which is relevant to that question and to the other issues which they are required to determine.
In making their determinative decision on the application the respondents are obliged to take into account all factors which are relevant to the application and to consider all material which is relevant. Factors which are relevant include those which have been identified by the courts in such authorities as *Royal Dublin Society v. Revenue Commissioners* (Supra), *Point Exhibition Company Limited v. Revenue Commissioners* [1993] 2 I.R. 551, *Allen v. Emerson and Ors*. [1944] K.B. 362

and others. They include also the fact that additional licenses may attach to the premises such as, (i) licences for public dancing under the Act of the 1835 (ii), licences for public music and singing under the Act of 1890 as amended and (iii), other licences for the sale of alcohol such as seven day on-licences.
In this case the respondents failed to conduct any inquiry or investigation directed towards establishing whether the applicant's premises could be fairly described as a "*place of public entertainment"*.
They made the decision to refuse the application on entirely separate grounds.
The decision of the respondents was based exclusively upon the conviction that any premises to which a seven day on-licence attaches must *ipso facto* be disqualified from the grant of a licence under s. 7 of the 1835 Act. The respondents' decision was based upon its clear contention, that no person can *"hold two licences for the sale of the same category of alcohol for the one premises. This is implicit in the licence code"* and that *"the legislature has created different categories of retail licences with distinct privileges and obligations many of which are mutually incompatible and have not provided that these licences can be held together."*.
It is acknowledged by the parties that no express statutory provision has been enacted which precludes the grant of two licences for the sale of the same category of alcohol for the one premises.
The respondents argue that such a statutory provision is *"implicit"* within a licensing code which has been described by the Supreme Court as *". . . stretching back over the centuries....., of labyrinthine complexity."* (see *Royal Dublin Society v. Revenue Commissioners* (supra)).
Mr. O'Reilly SC on behalf of the applicant says that the argument advanced on behalf of the respondents amounts to the contention that s. 7 of the 1855 Act has been impliedly repealed by subsequent statutes.
He points to the presumption against implied repeal and in particular the following principle of statutory interpretation; *"where a later enactment does not expressly repeal an earlier enactment which it has power to override, but the provisions of the later enactment are contrary to those of the earlier, the later by implication repeals the earlier in accordance with the maxim leges posteriores priores contrarias abrogant (later laws abrogate earlier contrary laws). This is subject to the exception embodied in the maxim generalia specialibus non derogant".* (See Bennion *Statutory Interpretation* 4th Ed. at p. 254).
He adds also the that the presumption against implied repeal *" . . . is stronger when modern precision drafting is used."* (See Bennion *Statutory Interpretation* 4th Ed. at p. 255).
In *DPP v. Scot Gray* [1986] I.R. 326, the Supreme Court (Henchy J.) adopted with approval the following extract from the judgement of A.L. Smith J. in *West Ham (Church Wardens and Overseers) v. Forth City Mutual Building Society* [1892] 1 Q.B. 654 at p. 658:
"The test of whether there has been a repeal by implication by subsequent legislation is this: Are the provisions of a later Act so inconsistent with, or repugnant to, the provisions of an earlier Act that the two cannot stand together?".
Later (at p. 326) the Court continued *". . . there is therefore brought into application the rule of statutory interpretation that when Parliament has provided specifically by statute for a limited set of circumstances, there is a presumption that general words in a later statute are not to be taken as overriding the earlier specific provisions, unless an intention to do so is clearly expressed. The presumption to that effect is encapsulated in the maxim generalia specialibus non derogant". In The Vera Cruz [1884] 10 APP CAS. 59 at p. 68 the Earl of Felborne L.C. stated the application of the maxim in the following clear words:*

> *"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or delegated from merely by force of such general words, without any indication of a particular intention to do so".*

In their letter dated 22nd November 2002 the respondents decided *inter alia* that:
"the legislature have created different categories of retail licences with distinct privileges and obligations many of which are mutually incompatible and have not provided that these licences can be held together. For example, in the case of an ordinary publicans licence drink may be sold to all comers provided they are sober and of age. In the case of a theatre licence drink may only be sold to persons who have engaged seats for the performance. Likewise, the prohibited hours contained in the Intoxicating Liquor Act, 1927 apply to an ordinary publican's licence whilst an entirely different set of rules apply to a theatre licence under s. 21 of the same Act. Both of these sets of rules cannot operate in respect of the one premises."
Section 7 of the Act of 1835 empowers the respondents to grant licences in respect of premises which comprise a *". . . place of public entertainment . . ."*. The section has not been expressly repealed or replaced.
No statutory provision has been identified which conflicts with the terms of s. 7 in a manner which has made it difficult or impossible for the respondents to fully and properly consider and determine applications made pursuant to s. 7 of the 1835 Act.
No statutory provision enacted subsequent to the Act of 1835 has been identified which has made it difficult or impossible for the respondents to decide whether particular premises comprise a *"place of public entertainment"*.
The respondents have not explained why premises which enjoy the benefit of a seven day on-licence cannot concurrently comprise a *"place of public entertainment"*.
The overall floor area of the premises in the instant case is of the order of 10,000 square feet.

The applicant enjoys the benefit of (a), a licence to keep and use the premises for public music, singing and other public entertainment (under the Act of 1890) and (b) a licence for public dancing on the premises (under the Act of 1935). The premises can accommodate large numbers of patrons.

The evidence adduced in these proceedings has established that performances of live music, dance and comedy are staged in the premises regularly, sometimes on a relatively large scale. Fashion shows and charitable and other events are also held on the premises. The respondents grant special exemption orders permitting the sale of alcohol on the premises before and during those events. The evidence suggests that no application by the applicant for such an order has ever been refused by the respondents. A fee is charged in respect of each exemption order. The respondents can grant up to 28 such orders in each month, (i.e.336 in each year).

It has been acknowledged by the respondents that a large number of these orders have been sought and obtained by the applicant in respect of the premises in recent months and years. It is the stated intention of the applicant to *"tender for more corporate events and move the business in a more entertainment focused manner."*

The respondents argue *". . . that in the case of an ordinary publican's licence drink may be sold to all comers provided they are sober and of age . . . the prohibited hours . . . apply to an ordinary publicans licence whilst an entirely different set of rules apply to a theatre licence . . ."*.

A seven day on-licence permits the sale of alcohol on the licensed premises during certain *"permitted hours"* (subject to particular conditions). Alcohol may not be sold during *"prohibited hours"* (i.e. at any other time).

A licence issued pursuant to s. 7 of the Act of 1835 permits the sale of alcohol on the licensed premises for a period of time commencing 30 minutes prior to a *"performance"* and terminating 30 minutes after the conclusion of that performance. This may permit the sale of alcohol during what would otherwise be *"prohibited hours"*. It does not permit the sale of alcohol to persons who are under age or who are not sober. It does not permit the sale of alcohol before or after *"prohibited hours"* other than on the precise terms applicable to a licence issued pursuant to s. 7 of the Act of 1835.

I do not understand why the two licences should necessarily be deemed to be incompatible with one another.

After full and due consideration the respondents may properly and lawfully find that a particular premises cannot be categorised as a *"place of public entertainment"* (within the meaning ascribed to that term by s.7 of the 1835 Act) if the relevant material and facts in that case discloses that the property for which the additional licence is sought is, in fact, a *"public house"*. They may refuse to grant an additional licence pursuant to s. 7 of the Act of 1835 to an applicant who is the holder of a seven day on-licence on that ground.

However the respondents, in making their determinative decision must take into account all factors which are relevant to the application and must consider all material which is relevant. They must deal with each application on its own facts and must provide fair procedures to each applicant.

This Court is not satisfied that the respondents may lawfully refuse to grant a licence under s. 7 of the 1835 Act on the sole ground the any premises to which a seven day on-licence attaches must *ipso facto* be disqualified from the grant of such a licence. The decision by the respondents to do so in this case was based upon a misunderstanding of law.

It follows that the applicant is entitled to the relief which it seeks.