

Neutral Citation No. [2008] NICA 56

Ref: **HIG7089**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **26/2/08**

IN THE COURT OF APPEAL IN NORTHERN IRELAND

**APPEAL BY WAY OF CASE STATED FROM A DECISION OF A
COUNTY COURT**

GARY THOMAS TOAL

Appellant/Objector;

-and-

D McGRANAGHAN LIMITED

Respondent/Applicant.

**IN THE MATTER OF AN APPLICATION UNDER THE BETTING
GAMING LOTTERIES AND AMUSEMENTS (NORTHERN IRELAND)
ORDER 1985**

Before: Campbell LJ, Higgins LJ and Weatherup J

HIGGINS LJ

[1] This is an appeal by way of case stated from a decision of His Honour Judge Grant sitting as an additional judge at the Recorder's Court for the Division of Belfast whereby it was held that the respondent fell within the provisions of Article 12(7) of the Betting Gaming Lotteries and Amusements (Northern Ireland) Order 1985 (the Order) and was thereby exempt from the provisions of Article 12(4)(j), which require an applicant for a licence to demonstrate that the number of licensed offices in the locality is inadequate.

[2] For some years the respondent carried on the business of a bookmaker in premises at 9 Telfair Street, Belfast on foot of a licence which had been renewed annually until 30 September of each following year. The licence was last renewed until 30 September 2004. On 7 November 2003 the respondent was served with a Vesting Notice in respect of 9 Telfair Street under the Local Government Act (NI) 1972. This was prompted by a planned substantial redevelopment of Victoria Square, Belfast and its immediate surroundings.

On 18 February 2004 the respondent ceased trading at the premises in Telfair Street, but was actively seeking alternative premises in the same vicinity. In June 2004 he agreed orally the purchase of premises at 34-36 Church Lane, Belfast. However due to unrelated difficulties this purchase was not completed until 28 September 2004.

[3] On 29 July 2004 the respondent applied in Belfast Magistrates' Court for renewal of the licence in respect of the premises at Telfair Street. On 23 August 2004 the appellant lodged a notice of intention to object to the renewal of the licence. On 7 September 2004 the application for renewal of the licence was withdrawn.

[4] On 28 September 2004 at Belfast Magistrates' Court the respondent lodged an application under Article 26 of the Order for temporary continuance of the bookmaker's business in the premises at Church Lane. On 7 October 2004 an order for temporary continuance of the business at the Church Lane premises was granted. Further such orders for temporary continuance of the business were made in March, May and on 1 November 2005. Following an inspection on 5 October 2004 the Fire Authority informed the respondent that the premises at Church Lane were satisfactory and that a Fire Certificate would issue in due course. On 6 October 2004 the Fire Authority wrote to the applicant indicating an intention to grant a Fire Certificate. The Certificate was issued on 10 February 2005.

[5] On 30 December 2004 the respondent applied under Articles 12 and 26(1) of the Order for the grant of a bookmaker's office licence for the Church Lane premises. On 6 May 2005 this application was dismissed by Mr Nixon RM on the ground that the Notice displayed on the premises and published in newspapers did not contain the requisite details for lodging objection to the application. However on the same date an order granting further temporary continuance of the business was granted. An appeal lodged against the decision of the Resident Magistrate was subsequently abandoned.

[6] On 7 July 2005, under Articles 12 and 26(1) of the Order, a further application for the grant of a bookmaker's office licence for the premises at Church Lane, dated 4 July 2005, was lodged with the Recorder's Court for the Division of Belfast. The appellant lodged objection to this application. The application came on for hearing before His Honour Judge Grant on 9 December 2005. By this time no application to renew the licence (granted in respect of Telfair Street) had been made. It was submitted on behalf of the objector that, in order to succeed in the application, the respondent required to be the holder of a valid bookmaker's office licence. It was submitted that the licence for the premises at Telfair Street, which premises had been demolished by September 2004, was extinguished and could not be revived. Therefore it was necessary for the respondent to prove that the number of available offices in the locality was inadequate to meet the demand within

that locality as required by Article 12 (4) (j). It was held, relying on certain passages from the decision of Kerr J in Re Eastwood 1997 N I 73, that the respondent fell within the provisions of Article 12(7). Paragraph (7) of Article 12 excludes the provisions of Article 4(j) from applications for the grant of a bookmaking office licence in certain circumstances. The learned County Court Judge was requested to state a case for the opinion of Her Majesty's Court of Appeal on the following question -

“Was I right in law in holding that the Applicant (the respondent herein) fell within the provisions of Article 12(7) of the Betting Gaming Lotteries and Amusements (NI) Order 1985.”

[7] It was submitted by Mr McCollum QC, who with Mr Michael Lavery appeared on behalf of the appellant, that the learned County Court Judge misconstrued the remarks of Kerr J in In Re Eastwood, supra, and erred in law in his conclusion. In effect the learned County Court Judge held that to avail of the exemption permitted by Article 12(7), an applicant was only required to show that the premises fell within the scope of Article 26(1)(a) - (e). It was submitted that an applicant for a bookmaking office licence has to satisfy two conditions before he can benefit from the provisions of Article 12(7). First the application must be in respect of premises which are on the site or in the vicinity of a licensed office for which the applicant holds a bookmaking office licence and secondly it is a licensed office to which Article 26(1)(a) to (e) applies and the licence is in existence. At the time of the application for the grant of a bookmaking office licence for the premises at Church Lane the applicant was not the holder of a bookmaking office licence for either the premises at Telfair Street or Church Lane. The effect of Article 26 is to permit business under a lawful licence to be conducted temporarily in other premises.

[8] Mr Comerton QC, who with Mr O'Connor appeared on behalf of the respondent, made two basic submissions. Firstly, that when premises are vested and a temporary continuance order is made under Article 26, there is no necessity for the licence relating to the former premises to be renewed. The temporary continuation order carries through until an application is made for a licence for new premises. Even if there is a requirement to renew the licence the respondent satisfied the definition of holding a bookmaking office licence and thereby complies with the requirements of Article 12(7). Secondly it was submitted that it cannot be correct that a party could object to renewal of the licence, as the appellant did in September 2004, and then subsequently argue that the respondent does not comply with Article 12(7) because he does not hold a licence to which the appellant had objected successfully. It was submitted that Articles 12 and 26 should be read together, the effect of which is to protect the licence holder's business when his premises become unavailable in certain circumstances and to enable him to carry on business in

alternative premises until new premises are ready. Furthermore even if the appellant's argument is correct, the respondent who is the holder of vested or damaged premises retains the licence at least in this case until September 2005 (see Article 20) and the respondent's application was made in July 2005, well within the time period. Mr Comerton QC contrasted the effect of the Order with the provisions of the Licensing Order (NI) 1996 and earlier liquor licensing legislation, where in order to obtain a new licence the applicant is required to surrender a valid subsisting licence. The bookmaking legislation does not require the surrender of a valid subsisting licence. Where a temporary continuation order for a liquor licence under Article 29 of the 1996 Order has been granted (the equivalent of Article 26 of the 1985 Order), no application to renew the liquor licence is required.

[9] Article 12 of the Betting and Gaming, Lotteries and Amusements (NI) Order 1985, as amended, provides -

"12. - (1) An application for the grant of a bookmaking office licence shall be made to a county court.

(2) The procedure for applications for the grant of bookmaking office licences is set out in Schedule 2.

(3) On an application for the grant of a bookmaking office licence the court shall hear the objections, if any, made under Schedule 2.

(4) A court shall, subject to paragraphs (5) and (7), refuse an application for the grant of a bookmaking office licence unless it is satisfied-

- (a) that the procedure relating to the application set out in Schedule 2 has been complied with; and
- (b) that the applicant is a licensed bookmaker; and
- (c) that the applicant is not a person in respect of whom a disqualification order in respect of bookmaking office licences under Article 30 or 53 is in force; and
- (d) that the premises are not premises in respect of which a disqualification order under Article 30 is in force; and

- (e) that there is in force in respect of the premises a fire certificate; and
 - (f) that the applicant owns the premises either in fee simple, or for a term of years of which at least 21 are unexpired at the date of the application; and
 - (g) that the premises will not injuriously affect, or be detrimental to, the interests of persons attending a place of worship, a religious institution, a school or premises habitually used by members of a youth organisation in the vicinity of the premises; and
 - (h) that the premises do not form part of licensed premises within the meaning of the Licensing (Northern Ireland) Order 1996; and
 - (i) [rep. 2004 NI 1 from 12 May 2004]; and
 - (j) that, having regard to the demand in the locality in which the premises to which the application relates are situated for facilities afforded by licensed offices, the number of such offices for the time being available (including any premises for which a licence is provisionally granted) to meet that demand is inadequate; and
 - (k) either-
 - (i) that there is in force planning permission to use the premises as a bookmaking office for the period during which the licence would be in force; or ,
 - (ii) that the premises may be used as such an office for that period without such permission.
- (5) A court may grant a bookmaking office licence notwithstanding that the procedure relating to the application set out in Schedule 2 has not been complied with if, having regard to the circumstances, it is reasonable to do so.

(6) A court may refuse an application for the grant of a bookmaking office licence if it is satisfied-

(a) that the premises are not suitable for use as a licensed office; or

(b) that the applicant has been convicted of an offence under this Part or Chapter III of Part III or Part I of the Betting and Lotteries Act (Northern Ireland) 1957 [am. 2004 NI 1 from 7 Aug 2004].

(7) Paragraph (4)(i) shall not apply to an application for the grant of a bookmaking office licence in respect of premises which are on the site or in the vicinity of a licensed office for which the applicant holds a bookmaking office licence and which is a licensed office to which Article 26(1)(a) to (e) applies.

(8) Where the court refuses an application for the grant of a bookmaking office licence, it shall specify in its order the reasons for its refusal.”

Article 12 (4) provides that a court shall refuse an application for the grant of a bookmaking office licence unless it is satisfied that the requirements set out at paragraph (4)(a) to (k) are fulfilled. Paragraph (4)(a) requires that the procedure set out in Schedule 2 to the Order must be complied with. However paragraph (5) provides discretion to the court to grant a licence notwithstanding non-compliance with the procedures for an application as set out in Schedule 2, if having regard to the circumstances it is reasonable to do so. Paragraph (4)(j) requires the court to be satisfied that the number of licensed offices in the locality is inadequate. Paragraph 7 provides an exception to the requirement of paragraph 4(j). This exception applies where the application for a bookmaking office licence is in respect of premises which are on the site of a licensed office or in the vicinity of a licensed office for which the applicant holds a bookmaking office licence and in either case the licensed office is one to which Article 26(1)(a) to (e) applies.

[10] Article 26(1) provides -

“26. - (1) Where any licensed office-

(a) has, by reason of fire, tempest, or other unforeseen and unavoidable calamity, become incapable of being used for the business

carried on in it under the bookmaking office licence; or

- (b) has been or, is likely to be, acquired or demolished, either wholly or to a substantial extent, under any statutory provision; or
- (c) has been or, is likely to be, extended to include premises which are, or are to be constructed so as to be, contiguous to it; or
- (d) is or is to be used for the purpose of the same business in conjunction with additional premises which are or are to be constructed adjacent to it; or
- (e) has been or is to be wholly or substantially demolished and new premises have been or are to be constructed wholly or partly within its curtilage;

and the licensed bookmaker is unable to carry on the business of a bookmaker in the licensed office, a court of summary jurisdiction may, on an application made by him in compliance with the procedure set out in Schedule 6, make an order authorising the continuance of that business in-

- (i) temporary premises erected or to be erected wholly or partly within the curtilage or on the site, of the licensed office; or
- (ii) premises in the vicinity of the licensed office or its site, for such period, not exceeding 6 months, as the court thinks fit."

Sub-paragraphs (a) to (e) of Article 26(1) provide a series of circumstances in which a licensed bookmaker is or will be unable to carry on business in his premises. These include, inter alia, where the premises are incapable of use through a calamity such as fire or are demolished under a statutory provision or for other reasons. In the instant case the premises were demolished as they were vested under a statutory provision, thus Article 26(1)(b) would be applicable to these premises. It was submitted on behalf of the appellant that while the premises may fall within Article 26(1)(b), Article 12(7) also required the applicant to be the holder of a bookmaking office licence in respect of the licensed office. It was submitted that the respondent (the applicant for the

licence) was not the holder of such a licence having failed to renew the licence following the withdrawal of his application on 7 September 2004 and could not benefit from the exception created by Article 12(7). Thus it was submitted that the respondent was obliged to fulfil the requirement of Article 12(4)(j) namely to demonstrate that the number of licensed offices in the locality was inadequate.

[11] A bookmaking office licence may be renewed by the clerk of petty sessions under Article 18 of the Order. In certain circumstances the clerk shall require the application to be made to the court. These include, inter alia, where a notice of objection has been served or a fire certificate cancelled. Article 19 makes provision for the hearing of the application by the court. Article 19 provides –

“19. - (1) On an application for the renewal of a bookmaking office licence a court of summary jurisdiction shall hear the objections, if any, made under Schedule 4.

(2) A court shall, subject to paragraph (3), refuse an application for the renewal of a bookmaking office licence unless it is satisfied –

- (a) that the procedure relating to the application set out in Schedule 4 has been complied with; and
- (b) that the applicant is a licensed bookmaker; and
- (c) that there is in force in respect of the licensed office a fire certificate.

(3) A court may renew a bookmaking office licence notwithstanding that the procedure relating to the application set out in Schedule 4 has not been complied with if, having regard to the circumstances, it is reasonable to do so.

(4) A court may refuse an application for the renewal of a bookmaking office licence if it is satisfied-

- (a) that the premises are not suitable for use as a licensed office; or

- (b) that, having regard to the manner in which the business carried on in the licensed office has been conducted since the last previous renewal of the licence (or, where the renewal applied for is the first renewal of the licence, since the licence was granted), it is unlikely that, if the licence is renewed, the business will be properly conducted; or
 - (c) that a person has been convicted of an offence in respect of a contravention, in connection with the licensed office of any of the provisions of this Part, of any regulations made under it, or of Chapter III of Part III, or any regulations made under it, or of Part I of the Betting and Lotteries Act (Northern Ireland) 1957; [am. 2004 NI 1 from 7 Aug 2004] or
 - (d) that, since the last previous renewal of the licence (or, where the renewal applied for is the first renewal of the licence, since the licence was granted), the licensed office has been used for an unlawful purpose or as a resort of persons of known bad character.
- (5) Where the court refuses an application for the renewal of a bookmaking office licence, it shall specify in its order the reasons for its refusal."

[12] Article 15(3) makes provision for the duration of a bookmaking licence. It provides -

"15. - (3) Subject to Article 1.3(4) and to the succeeding provisions of this Article, a bookmaker's licence or a bookmaking office licence shall, unless it is revoked or is a licence to which a disqualification order under Article 30 or 53 applies or it ceases to be in force under Article 173, remain in force from the date on which it is granted until-

- (a) the expiration of the licensing year in which it is granted, or
- (b) if it is granted within the 3 months immediately preceding the expiration of that

year, the expiration of the next following licensing year.”

Article 28 makes provision for the revocation of a bookmaking office licence in defined circumstances. Article 173 provides that a licence shall cease to be in force in defined circumstances. Neither of the circumstances envisaged by Article 28 or 173 apply in this case.

[13] Article 20 makes provision for the renewal of bookmaker’s licences and bookmaking office licences out of time. It provides –

“20.-(1) Where the holder of a bookmaker's licence or a bookmaking office licence which falls to expire at the end of a licensing year fails to serve due notice of the application for its renewal before the renewal date in that year a court of summary jurisdiction, upon application for the renewal of the bookmaker's licence or, as the case may be, the bookmaking office licence being made not later than the end of the next following licensing year, may renew the licence if it is satisfied that there was good reason for the failure.

(2) The procedure for applications under this Article for the renewal of bookmakers' licences is set out in Part I of Schedule 3 as modified by Part II of that Schedule, and for the renewal of bookmaking office licences is set out in Part I of Schedule 4 as modified by Part II of that Schedule.”

Schedule 3 and 4 provide that the clerk of petty sessions shall give notice of the renewal date in two newspapers circulating in the district. In Belfast the practice is for notice to be given that the renewal date is 30 September in any year. Applications are usually listed on the first Thursday in September for hearing or fixing of dates for hearing. Thus where an application for renewal is not made before the 30 September in any year the court may renew such a licence provided there is good reason for the failure to apply in time and the application is made before the end of the next licensing year. This is commonly referred to as the lying year. Where a licence is refused or granted but an appeal is lodged Article 21 makes provision for the continuance of both types of licence pending the determination of the appeal.

[14] An application for a bookmaking office licence shall be refused by the court unless it is satisfied that the conditions referred to in Article 12(4)(a) - (k)

are fulfilled. Unlike the liquor licensing legislation there is no requirement for a valid subsisting licence to be surrendered. However the court must be satisfied that the number of offices is inadequate to meet the demand in the locality in which the premises are situated – see paragraph (4)(j). Article 12(7) provides an exception to paragraph (4)(j). This applies where the premises, the subject of the application, are on the site of a licensed office or in the vicinity of a licensed office and the applicant holds a bookmaking office licence for that licensed office. In addition, for the exemption to apply, the licensed office must be one to which Article 26(1)(a) to (e) applies. In this instance Article 26(1)(b) applies – the premises have been acquired or demolished under statutory provision. Article 26(1) is relevant only to identify the circumstances in which Article 12(7) applies. Once Article 12(7) applies then the court has to consider whether the applicant is the holder of a bookmaking office licence for a licensed office.

[15] The applicant renewed the licence for Telfair Street until 30 September 2004. Under Article 21 the applicant had until the end of September 2005 to renew the licence provided he had good reason for failing to do so before the end of September 2004. In the absence of an objection the licence could, in theory, have been renewed by the clerk of petty sessions as there was no evidence of the fire certificate having been cancelled. By 30 September 2004 the premises had been vested and demolished. But before that date the applicant had applied for an order permitting temporary continuance of the business at Church Lane on the basis that the latter premises were in the vicinity of the licensed office, namely Telfair Street. Where the court authorises the temporary continuation of business in other premises, those premises shall be deemed to be the licensed office (Article 26(6)). A ‘licensed office’ is defined in Article 2(2) as premises in respect of which a bookmaking office licence is in force. Thus, if lawfully made, the applicant is the holder of a bookmaking office licence in respect of the premises at Church Lane. A temporary continuation order shall be for such period not exceeding six months as the court thinks fit, though further such orders may be made. Once made a temporary continuation order shall cease either at the end of the period specified in the order or when the applicant resumes business in the old premises or in premises for which a new bookmaking office licence is granted. The applicant was granted a series of temporary continuation orders which covered the period up to the hearing before His Honour Judge Grant. It was submitted by Mr McCollum QC that the bookmaking office licence granted in respect of Telfair Street expired either on 30 September 2004 or 30 September 2005, as no application was made to renew it. Neither Article 18 nor 19 contemplate an application for renewal in circumstances in which the premises have been vested and demolished and no business is being carried on in them.

[16] Where licensed premises become incapable of being used for the business carried on under a bookmaking office licence the licensed holder has

several options. He could cease business and allow the licence to lapse through the passage of time. Following notification of the renewal date it would be open to him to apply under Article 18 for renewal by the clerk of petty sessions who should grant the application provided there is no objection and the fire certificate has not been cancelled and there is no change of the type contemplated by Article 18(4)(c). Once issued the fire certificate remains in force until revoked or cancelled. Where there is objection or the fire certificate has been cancelled or some change in the circumstances has occurred the clerk of petty sessions must refer the application to the court. Under Article 19 the court shall refuse an application unless satisfied that there is a fire certificate in force in respect of the licensed premises. In other circumstances the court has discretion whether to grant the renewal or not. If the premises were damaged or destroyed or otherwise incapable of use but a fire certificate remains in force the court could renew the licence provided the applicant is a licensed bookmaker and the proper procedure has been followed. By the time of the next renewal date the licensed holder could apply again or if there is good reason not to apply by that date, to apply in the lying year. However the reality is that if a licensed bookmaker is unable to carry on business in the licensed office he will wish to do so elsewhere. An order of temporary continuance under Article 26 permits him to do so either in temporary premises on the site of the licensed office or in premises in the vicinity of the licensed office. Where he is permitted so to do the new premises shall be deemed to be the licensed office. Thus the licensed bookmaker has a choice either to renew the licence but not carry on business or to seek to carry on business elsewhere under Article 26.

[17] What is the effect of the temporary continuation order? Mr McCollum QC submitted that Article 26 does not licence the premises. Mr Comerton QC argued that the effect of the temporary continuation order was to carry the licence through until either the applicant returns to the old site or is granted a bookmaking office licence in respect of new premises. The learned County Court Judge held that the existence of a valid licence was neither a prerequisite to an application under Article 26 nor a prerequisite to an application under Article 12. He proceeded in accordance with the principles enunciated by Kerr J in Re Eastwood. In that case application was made for judicial review of a decision of the Resident Magistrate whereby he granted a temporary continuation order under Article 26 to enable business to be carried on in a portacabin erected on the site of licensed premises which had been destroyed by fire. The application was lodged on 29 November 1995 and granted on 7 December 1995. The fire occurred in April 1994. The licence had been renewed in September 1994 and valid until 30 September 1995. It was contended that the licence was not validly renewed in September 1994 as the premises were derelict and the fire certificate had ceased to have effect. Central to the application for judicial review was the claim that at the time of the application for the temporary continuance of business order there was no valid subsisting licence and that this was a prerequisite to the grant of such an

order. An application had been made in August 1995 to renew the licence for the premises. This application was adjourned to February 1996 and in the interim period the temporary continuance order was made. The renewal of the licence was made by the clerk of petty sessions under Article 18 of the Order. He had jurisdiction to do so unless the fire certificate had been cancelled. There was no evidence the fire certificate was cancelled and it remained in force until it was cancelled or revoked. Therefore the clerk of petty sessions was competent to make the renewal order in September 1994 and it was validly made. It was therefore held by Kerr J that at the time of the application for the temporary continuance of business order there was a valid subsisting licence in respect of the premises destroyed by fire and therefore the temporary continuance order was properly made. That finding was sufficient to dispose of the applicant's case for judicial review. Having done so Kerr J then went on to comment on the argument advanced on behalf of the respondent bookmaker in that case. He said at page 80 -

“This conclusion disposes of the centrepiece of the applicant's case but it is appropriate to say something of the main argument advanced by Stanleys. This was to the effect that a valid subsisting licence is not required in order to make an application under art 26 for a temporary continuance order. In advancing this argument, counsel drew attention to the absence of any express provision to that effect in the article itself. He also submitted that there were sound practical reasons that such a requirement should not be imported into the article. If a bookmaker's premises were destroyed shortly before an application to renew the licence and the fire certificate were revoked it would be impossible for an application for temporary continuance to proceed if a valid subsisting licence was required.

I agree with these submissions. There is nothing in the text of art 26 which requires that a subsisting licence be in existence before application for temporary continuance is made. On the contrary, art 26(2), which lists a number of circumstances in which the court must not make an order for temporary continuance, makes no reference to the need for a valid subsisting licence. It would be incongruous to import such a condition into the article by implication where the legislature has expressly specified a number of particular requirements which must be fulfilled. I can envisage no policy argument of significance which would justify the implication of such a precondition.

Moreover, the implication of such a precondition would be anomalous in light of the provisions of art 20. This allows for the renewal of bookmakers' licences and bookmaking office licences out of time. It provides that where due notice of the application for the renewal of the licence has not been served before the renewal date the licence may be renewed if application is made 'not later than the end of the next following licensing year'. Thus, even though a licence has lapsed, it may be renewed provided there was good reason for failing to make the renewal application. It would be surprising if the existence of a valid subsisting licence was not required in order to renew a licence but that it was necessary in order to make a temporary continuance application. I have concluded, therefore, that it was not necessary for a valid subsisting licence to be in existence in order that Stanleys make the art 26 application in November 1995 and, on that account also, the applicant's challenge to Mr Milner's decision must fail."

In giving his decision the learned County Court Judge quoted the last two paragraphs referred to above and stated -

"In accordance with the principles enunciated by Kerr J, that the existence of a valid licence is not a prerequisite to the application of Article 26, and it is not a prerequisite to an application of Article 12, it follows that the existence or non-existence of a valid licence in respect of these premises is irrelevant to the consideration of this application by the court. The issue to be considered by this court is whether the premises in Telfair Street fall within the scope of Article 26(1)(a) to (e) of the Order. I find as a fact that the Telfair Street premises were, in accordance with Article 26(1)(b) acquired and demolished wholly under a statutory provision, the Local Government Act (NI) 1972. Accordingly the evidential relief provided by Article 12(7) is triggered. Order (sic) paragraph 12(4)(j) does therefore not apply to this application. Thus the Applicant does not have to satisfy me that the number of available offices in the locality is inadequate to meet the demand within that locality."

[18] It is clear that Kerr J was referring to the requirement for a valid subsisting licence in applications to renew a licence and applications for a temporary continuance of business order and not an application for a licence under Article 12. The learned County Court Judge found, relying on the remarks of Kerr J quoted above that it was not a prerequisite in an application under Article 12 for the applicant to be the holder of a valid and subsisting bookmaking office licence and thereby the applicant was entitled to the exemption provided by Article 12(7). There is nothing in the judgment of Kerr J which supports the proposition that a valid and subsisting licence is a prerequisite for an application under Article 12. The question in the case stated is widely framed – whether the learned County Court Judge was correct in holding that the Applicant fell within the provisions of Article 12(7). The applicant did not fall within the provision of Article 12(7) for the reasons advanced by the learned County Court Judge. The question, however, requires the court to consider whether in fact the applicant does fall within the exemption provided for by Article 12(7).

[19] As indicated above a holder of a bookmaking office licence will have a choice to make should he be unable to carry on business in his licensed premises. Should he decide to carry on business elsewhere (as commercial reasons would dictate for most licence holders), he may apply under Article 26 for an order authorising the continuance of the business in other premises. Those other temporary premises are then deemed to be the licensed office in respect of which a bookmaking office licence is in force. The temporary premises must be within the vicinity of the (original) licensed office and the authorisation for temporary continuance may be for such period as the court thinks fit not exceeding six months. A number of such orders may be made. The temporary order ceases on the expiration of the specified term or on resumption of business in the old premises or the commencement of business in new premises for which a bookmaking office licence has been granted.

[20] Under Article 26(2) a court shall not make a temporary continuance order unless it is satisfied of four matters. These are that the temporary premises should be adequate for the business, are not the subject of a disqualification order, that a fire certificate is in force in respect of them and the licensed bookmaker either proposes to resume business in the licensed office within a reasonable period or has made an application for a new bookmaking office licence for those or other premises or proposes to do so within a reasonable time. The stipulation that resumption of business or an application for a new bookmaking office licence should be within a reasonable period is significant. Many of the circumstances envisaged in Article 26(1)(a) – (e) will require time and the necessity to move expeditiously is obvious where a licence may expire through the passage of time if not renewed. Where the intention is to resume in other premises, as in this case, a new bookmaking office licence for those premises must be obtained under Article 12. Where the licensed bookmaker is unable to carry on business in the

old premises, for one of the reasons set out in Article 26(a) - (k), then to qualify for the exemption permitted by Article 12(7), the applicant for the new licence must hold a bookmaking office licence for premises which are on the site or in the vicinity of that licensed office and the licensed office must be one to which Article 26(1)(a) - (e) applies. In this instance the licensed office to which Article 26(1)(a) - (e) applies is the office at Telfair Street. Those are the premises which have been acquired and demolished and to which Article 26 applies.

[21] Under Article 12(7) the applicant requires to hold a licence for the premises at Telfair Street. Similarly if a licensed bookmaker was resuming business in the licensed office, in which he was previously unable to carry on business, he would require a licence for those premises. Therefore the status of the bookmaker in relation to those premises is critical. The licence was last renewed to 30 September 2004. An application to renew the licence was lodged but withdrawn on 7 September 2004. The respondent had until 30 September 2005 to apply to renew that licence provided he could satisfy the statutory requirements. He did not do so. Once the licensing year has expired he was no longer the holder of a bookmaking office licence, though the absence of a valid subsisting licence would not prevent an application for renewal or an application for a temporary continuance order (as per Re Eastwood) provided the other conditions are satisfied. Therefore at the relevant time the applicant did not hold a bookmaking office licence as required by the provisions of Article 12(7) and I would answer the question posed in the case stated 'No'.