

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012.

AND

IN THE MATTER

of application under s. 22 of the
Sale and Supply of Alcohol Act
2012 by **Ted's Bar & Grill
Limited** in respect of premises
at **29 Ensign Street,
Christchurch.**

**RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING
COMMITTEE**

Chairperson: Mr P R Rogers
Members: Ms T J Surrey
Mr R Wilson JP

HEARING

at The Atrium, 455 Hagley Avenue, Christchurch on the 4 March
2019.

PRESENT:

Christopher Patrick Casserly – Director of the company
Anneke Lavery - Licensing Inspector - To assist
Allison Houston – Team Leader Alcohol Licensing – To assist
Constable Graeme Jolliffe - NZ Police – To assist
Paula Williams – Representing the Medical Officer of Health
Robert Liddell -- Objector
Anna Marie Delaney – Objector
Mike Mora – Halswell-Hornby-Riccarton Community Board
member
Mark Saunders – Assisting the Committee
Will Taffs -- Solicitor observing the proceeding

INTRODUCTION

[1] This is an application by Ted's Bar & Grill Limited (Ted's) for an On- Licence for premises to be known as Ted's Bar & Grill situated at 29 Ensign Street, Christchurch. The company is a private company owned by the sole director and shareholder Christopher Patrick Casserly, known as Ted. For the purposes of the Decision he will be called the "Applicant".

- [2] In 2012 the Applicant purchased premises at 29 Ensign Street, Christchurch known as The Quarry Bar and Grill and renamed it Ted's Bar & Grill. In September of 2013 after being closed for five months for refurbishment the premises burnt down and never reopened. The entire site at Ensign Street since that time has been re-developed and a number of shops of different sizes have been built. One of these is to be the site of the new premises for Ted's Bar & Grill. The premises are complete but no inside fit out has taken place.
- [3] Ensign Street is situated in the suburb of Halswell, south west of the Christchurch central business district. This street is one street over from the main highway between Christchurch and Akaroa and on the corner with Balcairn Street. It has historically always had a small shopping centre amongst mainly residential houses. In this particular area there are medical rooms across the road with a church and pre-school at the back which is accessed from Balcairn Street. The whole site has been re-developed in recent times.

THE HEARING

- [4] Mr Casserly, the Applicant, gave evidence of being in a church ministry for fifteen years before becoming involved in the hospitality industry. He became a senior minister in the church and stated community help and service was a major part of what he did and he still cares for the community. For almost twenty years he has been in hospitality and has run some of the biggest bars in Christchurch.
- [5] He gave evidence showing an excellent knowledge of the Act in relation to its object. He stated he was on the steering committee of 'ServeWise' a toolkit used nationally by Licensees in the management of their premises. He had previously been employed by Hospitality NZ as Regional Manager and to further develop Host Responsibility training nationwide.
- [6] The Applicant then covered the main objections to this application and he saw them as being around Amenity and Good Order of the locality. He pointed out that the Quarry Bar and Grill had been mentioned as a key contributor to vandalism and public nuisance prior to him taking over the ownership. He then closed the premises for renovations which were complete in May 2013. In September 2013 the premises burnt down. He stated the Quarry Bar was purchased out of liquidation and commented the post-earthquake hospitality environment was very different and put pressure on licensed premises due to the closure of many establishments. Despite this he still had no complaints from the neighbours or the authorities in the five months he was open. He has become aware of two noise complaints one of which was dealt with at the time with no abatement notice being issued and the other was found not to be excessive. He was not previously aware of either complaint but accepts that they happened.

- [7] The Applicant believed he had a great working relationship with the church and many other community groups and was a major contributor to the church's project known as the "Men's Shed".
- [8] Mr Casserly drew the Committee's attention to the fact that the old premises that burnt down started life as a Keystore Supermarket and then in 1993 became the Stags Head Bar and Restaurant. He stated the new building is of a totally different structure, with double glazing and designed for use. He does not envisage any noise issues but should they arise he will work with neighbours on any perceived issues. In the time he was operating Ted's he never had issues with nuisance, littering or anti-social behaviour. He made the point that in his opinion since the new Act with its guidelines, rules and expected behaviour from both patrons and licensees who take Host Responsibility and the reduction of alcohol related issues seriously, things had improved.
- [9] The Applicant concluded by saying that the application process was very stressful and the delay as result of public objections had cost him a substantial sum of money.

Cross examination

- [10] The Inspector questioned the Applicant about the hours he intended to be open and he replied until 11.00 pm as he believed this was late enough in the suburbs. Concerning noise he was asked if there was anything else he could do other than double glazing and he replied there would be no open windows, and there would be carpet on the floor to absorb noise. The Inspector asked about previous issues at the premises and he replied that it must have been prior to him taking over. Questioned about signage the Applicant said there would be little of it, but just with a logo over the door to the premises. There would be some frosted glass perhaps depicting just a bottle of beer or similar. He commented that the premises would not be visible from Ensign Street. Concerning the outside licensed area for the proposed premises the Applicant replied that was purely to allow patrons to access another part of the premises which did not have internal access and would be the smoking area.
- [11] Mr Liddell, one of the Objectors questioned the Applicant as to how many 'pokie machines' would be in the premises and the Applicant replied 18. The objector then continued to ask some questions concerning gaming machines and the Committee pointed out that the District Licensing Committees did not have the power to make a determination about Gaming Act matters and that he was welcome to cross-examine the witness on matters relating to gaming machines as far as they related to s.105 of the Act. The witness did not proceed with this

line of questioning. He queried if the outside area was smoke-free and when Mr Casserly replied no, he replied would you make it smoke-free.

[12] Ms Delaney the other objector chose not to cross-examine the Applicant.

[13] Mr Mora from the Halswell-Hornby-Riccarton Community Board, (it should be noted that the Committee had previously been advised that he had been appointed under s. 204(2)(c) of the Act to speak to the Committee), was permitted to question the Applicant in the absence of any representative from the Halswell Residents' Association. The Committee asked Mr Mora if he had been asked by the Residents of the Association to speak in support. He replied yes. The Committee inquired if he knew the reason for their absence and he understood that the person who was going to speak was not able to make it to the Hearing.

[14] Mr Mora explained he was there in support of the residents and that it was the view of the Board that the residents were happy about the amenity and good order of the area since the old bar had burnt down and saw that it would be difficult for them to maintain their quality of life with another bar going into the area. Mr Mora put it to the Applicant about other venues that might go into the area and Mr Casserly replied that he considered that as irrelevant and he was not in a position to wait to see what might go into the area.

Committee Questions

[15] The Committee asked the Applicant if he had ever been subject to any enforcement action before the ARLA, he replied no. He was questioned about car parking and he replied most patrons would park outside the front of the proposed premises and there were car parks at the rear which belonged to the complex but there was an agreement that those parks could be used by church-goers on a Sunday. The Applicant was questioned about the operation of the Quarry Bar and Grill before he took over. He replied it was losing money and the takings were down to \$11,000.00 a week but in the 5 months that he was operating, with a much improved restaurant menu, he had raised the takings to \$34,000.00 a week. He said that the problems before he took over were that it was an old style restaurant coupled with problems over patron behaviour.

The Agencies

[16] The Licensing Inspector did not oppose the application and did not give evidence. The bundle of documents, including her Inspector's Report was handed up and accepted by the Committee. In her report she made the following comments. She said that she considered the conditions sought were consistent

with an On-licence for the area and meets the purpose of the Act and the criteria set out in section 105 and 106 of the Act.

[17] The Police were not in opposition and Constable Jolliffe was called to the stand to produce a statistical document in confidence detailing the calls for service in the area surrounding the premises in question. The Applicant asked the Constable if there had been a drop in assaults and drunken behaviour and he replied yes; but such issues were caused by previous management of the Quarry Bar. The Constable commented that the statistics in the document did not record where the offenders had come from.

[18] The Constable was cross-examined by Mr Liddell and told him that as he lived in the street he was concerned about the increased access to alcohol with three premises in close proximity. The Constable replied that he considered the important thing was how the premises were managed and the experienced operator can turn premises around. He was asked by the Committee what experience he had and replied while he had only been on the Alcohol Harm Protection Unit for twelve months he had been on Team Policing for four years where he saw first-hand the problems associated with alcohol on licensed premises.

[19] The representative of the Medical Officer of Health did not cross-examine.

Evidence of Objectors

[20] Mr Liddell gave evidence of the matter being close to his heart and that he had been concerned to find there were going to be “pokie machines” on the premises and who knows what type of person this would attract. He believed it would be a backward step. He pointed to research that showed an increase in licensed premises results in an increase in alcohol harm.

[21] When cross-examined by the Inspector he said he had lived on the street for 3 years and agreed some of what he said may be hearsay, he replied he had lived alongside other licensed premises so was aware of the problems. He was asked if he had opposed an Indian Restaurant that was going into one of the shops and he replied no. The witness commented that there was a lot of difference between a tavern with a restaurant, which had “pokie machines” and an Indian Restaurant. When asked about the proposed hours, the witness did not think that 11.00 pm closing was reasonable with other premises in the block closing earlier. He was asked if he was aware there had been licensed premises on that site since 1996 and replied yes.

- [22] The Applicant cross-examined the witness and asked if he had opposed the Resource Consent application for the block of shops and he replied that he had not. Under cross examination the witness said that the reason he was at the Hearing was the effects of these proposed premises on society. The Applicant put to him did he not think that the landscape had changed under the new Act, he replied no.
- [23] Ms Delaney gave evidence as an objector that she worked in the area and had witnessed inappropriate behaviour and did not want to see it return. There was the issue of cleaning up the area and the number of other premises in the area. She said that in her view gaming and a family restaurant do not go together. The witness raised the issue of noise when patrons leave and queried why the Applicant was applying for hours from 8.00 am.
- [24] Under cross examination by Mr Casserly, he asked if she opposed the Indian Restaurant and she replied she did not know it was going in. Her issue was with the amenity and good order of the area and because she works late on some occasions at nearby premises she thought that it would deteriorate if the application was granted. The Applicant put it to her that when operating a bar it was not unusual for shift workers to come for a drink after they had finished work. She replied that was reasonable but the thought had never struck her.
- [25] Mr Mora of the Halswell-Hornby-Riccarton Community Board addressed the Committee and stated that the Board believed the proposed premises would alter the enjoyment of the area and that there were enough outlets in the area already and the addition of another licensed premises would alter the amenity and good order of the area. In the time the tavern had been closed he believed the residents had noticed an improvement in the amenity and good order of the area.

Closing Submissions

- [26] The Inspector stated that after inquiring into the application and considering her responsibilities under s.103 she did not oppose the application. She touched on the fact that the site had previously operated as licensed premises and that it was important that these premises and the entire development had a Resource Consent. She referred the Committee to the purpose and object of the Act. She said she had no concerns of the suitability of Mr Casserly, likewise his intention regarding host responsibility. While the Objectors had raised concerns over the hours, what was important was the safe and orderly operation of the premises. She pointed out the concerns of the Objectors were very general and not based on evidence and referred the Committee to *Rapira-Davies v Pastel NZARLA 52 (2 March 2017)* commenting that as this was the initial licence it was only granted for 1 year which is a probationary period.

[27] The Police had no submissions to make.

[28] The MOH commented on the fact the Objectors had spoken of their concerns based on the operation of the premises previously and that the application before the Committee today was a vastly different proposition. The MOH had not lodged an opposition and on the evidence heard at the Hearing remains satisfied with the no opposition report.

DISCUSSION

[29] All the evidence presented to the Committee has been considered, and the Committee have considered the relevant sections of the Act. In particular the sections listed below:

Section 3(2) The purpose of the Act.

The characteristics of the new system are that—

- a. *it is reasonable; and*
- b. *its administration helps to achieve the object of this Act.*

Section 4

The object of this Act is that—

- a. *the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
- b. *the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*

(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—

- a. *any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
- b. *any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*

Section 105 Criteria for issue of a licenses

- (1) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - (a) *the object of this Act:*
 - (b) *the suitability of the applicant:*
 - (c) *any relevant local alcohol policy:*
 - (d) *the days on which and the hours during which the applicant proposes to sell alcohol:*
 - (e) *the design and layout of any proposed premises:*
 - (f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
 - (g) *whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
 - (h) *whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
 - (i) *whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*
 - (i) *they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
 - (ii) *it is nevertheless desirable not to issue any further licences:*
 - (j) *whether the applicant has appropriate systems, staff, and training to comply with the law:*
 - (k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*
- (2) *The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*

[30] The Committee in this matter has to consider the issue of a new On-licence for premises to be operating as a tavern with a restaurant and an area for gaming machines. It has to be said that at the start of these discussions the Committee has no power to make a decision as to whether premises should have gaming machines or not. Therefore this issue was not considered by the Committee unless evidence was given to tie it back to s.105 of the Act around the effect that

gaming machines might have on the amenity and good order of the locality. No such evidence was produced.

[31] This application was for a new licence on the same site as a previous tavern called Ted's Bar & Grill which burnt down in 2013. The area since that time has been totally redeveloped with a number of shops of various sizes being built by a developer not associated to the Applicant.

[32] The Committee on its own undertook a site visit after the Hearing and this consisted of a walk around the area. The Committee found a newly built block of shops centred on a small car park. While allowing for vehicle and pedestrian access there were shops on four sides. The way the shops have been built means that from Ensign Street the premises cannot be seen. There is a side street, Balcairn Street, the complex being on a large corner site and this means that one side of the proposed premises will open directly out onto Balcairn Street. The Committee notes that the development was subject to a non-notified *Resource Consent RMA/2017/269*.

[33] Eighteen public objections were received within the objection period. Chief amongst these was the Halswell Residents' Association. The Objectors raised objections as a result of the following concerns: exposure of alcohol to young persons, the hours sought, the number of existing licensed premises, increase in traffic in the area, increase in noise and rubbish, possible reduction in the amenity and good order of the locality and potential issues of alcohol abuse. On the day of the hearing only two persons who had objected attended the Hearing. Mr Mora of the Halswell-Hornby-Riccarton Community Board attended the Hearing after obtaining the leave of the Chairperson to appear and be heard pursuant to s.204(2)(c) of the Act; by that Board to supply community input.

[34] This application was not opposed by any of the Agencies and a Hearing was held as a result of a number of objections being received.

[35] Mr Casserly gave evidence as owner and the sole shareholder. He impressed the Committee with his knowledge of the Act and the work he had done around processes to assist in the management of licensed premises to a national level. Clearly from the evidence he gave he was a person with skills far above that of an average owner/general manager, having turned round this business in five months after refurbishing it, and prior to it burning down. He left the Committee in no doubt that he was aware of the issues and capable of following the intent and purpose of the Act.

[36] He pointed out the history of this site back to 1996 having been licensed premises and it has to be said that this modern purpose built building will have a lesser

impact on the amenity and good order of the locality than the old one. Likewise the Committee believes that the evidence the Applicant gave would result in a well-run establishment with a minimum of instances of noise and vandalism that could be sheeted back to the proposed premises.

[37] The Objectors in particular Mr Liddell, had issues mainly over gaming machines and while he attempted to link this to s.105, gave no evidence of how gaming machines would impact on the amenity and good order. Likewise Ms Delaney spoke about her concerns of the hours and amenity and good order but neither witness produced any evidence of how this was linked to the proposed premises. It seemed to the Committee that the concerns of the community were as a result of the fear that the situation may return to the behaviour of patrons when the premises were called The Quarry Bar and Grill. In fact Mr Liddell had not even lived in the area at that time.

[38] The Committee considered the objections received from the Objectors who did not attend. Statements from the Objectors are not evidential and whilst they may be justifiable concerns, they cannot be given the weight of first hand oral or documentary evidence. Higher authorities have commented in the past on the hill that Objectors need to climb if there are no objections from the Agencies; it was quoted in: *Ponda Holdings Limited* [2014] NZARLA PH 558 and it was said at [12-13]:

“The same principle applies to the new criteria contained in ss 131 and 105 of the Act. Thus, when considering s 131(1)(b) of the Sale and Supply of Alcohol Act 2012, where there are no adverse comments by the reporting agencies it is unlikely that an objector will satisfy the Authority that “the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence”.

[39] Decisions such as *The Narrows Landing Limited* NZLLA PH 479/2003; recognise that it can be hard for Objectors to mount a sustainable objection in respect of matters such as noise and nuisance. However, it is equally difficult for an applicant to respond effectively if the criticisms are too generalised. *The Authority stated:*

‘Nevertheless, unless neighbours are prepared to provide details of when the breaches of the Act or the Resource Management Act occur and what action was taken, it would be difficult for them to overcome the threshold of factual information required to put the applicants to proof.’

[40] In a case before the Liquor Licensing Authority which was the higher Authority before the new Act was introduced said in *British Isles Inn Ltd* NZLLA PH 406/06 the Authority stated:

“Although the onus is on the company to establish its suitability, there is a reasonably high threshold to be met by the Objectors in order to displace the absence of concerns by reporting agencies. We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an applicant is unsuitable”.

While this case was about suitability it does indicate the approach being taken by the Authority.

[41] The Committee adopts the approach outlined by the High Court in **Otara-Papatoetoe Local Board v Joban Enterprises Limited** CIV 2011-404-007930 [2012] NZHC 1406 and consistently applied since. The first steps to consider are:

- (a) The relevant statutory criteria under consideration;
- (b) The reports presented by the Agencies; and
- (c) Public Objections.

[42] In **Otara-Papatoetoe Local Board** decision the Court held that then (referring to the then object of the Act):

“Having considered all of that information, the Authority must stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires the Authority to form a view on whether there is evidence to suggest that granting the application will be contrary to s 4 (1), increase the risk of alcohol abuse. While a causal nexus is required between such evidence and the relevant risk, it is unnecessary to qualify the nature of the link by reference to such words as ‘powerful’ or ‘direct’.”

[43] In the case before this Committee we have stood back and determined whether the application should be granted (and if so with conditions) or refused after forming a view on whether there is evidence to suggest the granting the application will be contrary to the dual objects of the Act that;

- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
- (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.”

[44] The Committee has considered all matters under the criteria of the Act, s.105 and while not all matters were raised no conflict was found with either the purpose or object of the Act.

In *Linwood Food Bar Limited v Davison and Ors CIV-2014-000562 [2014] NZHC 2980*, the High Court noted that:

[18] Importantly, as was emphasised in Venus NZ Ltd, the object in s 4 of the 2012 Act differs from that contained in the 1989 Act in that the aim is now minimisation of alcohol related harm, not merely is reduction. That means both the Authority and this Court, must have regard to reducing alcohol related harm to the smallest amount, extent or degree, when making decisions on the grant of renewal of a licence”.

[45] That having been said the purpose of the Act, s. 3(2) is that it be reasonable and its administration helps to achieve the object of the Act. While s. 4(1)(b) talks of minimisation it does not mean that applications should not be granted under any circumstances, to do that would be contrary to s. 3(2). The Committee believes that the potential harms caused by the granting of this application have been minimised.

[46] We are therefore satisfied after standing back and evaluating all the matters placed before us and having had regard to the criteria as set out in s.105 of the Act that this application does not offend against either the purpose or object of the Act. Pursuant to s. 211(1)(c) the Committee’s attitude to this application is therefore that it should be granted. We hereby grant the application for an On-licence for one year, pursuant to s.104(1) subject to the following conditions:

Compulsory conditions – section 110(2)

The following conditions are compulsory:

- (a) Alcohol may only be sold under the licence only on the following days and during the following hours when the premises are being operated as a tavern:

Monday to Sunday, between the hours of 8.00 am to 11.00 pm

- (b) Drinking water will be freely available on the premises as specified in the application.

Discretionary conditions – section 110(1) the following discretionary conditions:

- (a) The licence holder must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.

- (c) Food must be available for consumption on the premises as specified in the application.
- (d) Low-alcohol beverages must be available for sale and supply on the premises as specified in the application.
- (e) Non-alcohol beverages must be available for sale and supply on the premises as specified in the application.
- (f) The licensee must provide assistance with or information about alternative forms of transport from the premises as specified in the application.

Section 117 – Other Discretionary conditions

The following steps must be taken to promote the responsible consumption of alcohol:

- (a) The licensee must implement and maintain the steps proposed in their host responsibility policy aimed at promoting the reasonable consumption of alcohol.
- (b) Any other discretionary conditions that the applicant has agreed to e.g. water from reticulated stations.

Restricted and supervised area – section 119

The following part of the premises are a supervised area: The main bar.

The licence is also subject to the following conditions, which in the Committee's opinion are not inconsistent with the Act:

- a) Noise should be controlled so as not to disturb neighbouring residents.
- b) Alcohol must only be sold, supplied and consumed within the premises as per plan provided.
- c) A copy of the licence, together with signs showing the age restriction must be clearly displayed on the premises.

Other restrictions and requirements

The following restrictions and requirements are to be noted on the licence:

Section 51 – Non-alcoholic drinks to be available

Section 52 – Low alcoholic drinks to be available

Section 53 – Food to be available

Section 54 – Help with information about transport to be available

Section 56 – Display of signs

Section 57 – Display of licences

Section 214 – Manager to be on duty at all times and responsible for compliance

A copy of the licence setting out the conditions to which it is subject is attached to this decision. The licence shall be issued for 1 year.

THE LICENSED PREMISES

The premises are identified on the plan provided with the application for a licence.

DATED this 20 March 2019

A handwritten signature in blue ink, appearing to read 'P R Rogers', is written over a light blue grid background.

P R Rogers

Chairperson

CHRISTCHURCH DISTRICT LICENSING COMMITTEE