

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by
Progressive Retails Limited for
an off-Licence pursuant to s.99
of the Sale and Supply of
Alcohol Act 2012 in respect of
premises situated at **1B/300
Lincoln Road, Christchurch,**
known as **Merchant's Liquor**

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chair: Mr P R Rogers
Members: Mr D Blackwell ^{QSM}
Ms T Surrey

A HEARING DECISION ON AN APPLICATION FOR A NEW OFF-LICENCE

HEARING: at 53 Hereford Street, Christchurch, on the 24th of November 2020

PRESENT:

Manpreet Kaur – Applicant - Progressive Retails Limited
Hamish Evans – Counsel for the applicant
Bailey McIntosh – Assisting Counsel for the applicant
Martin Ferguson – Licensing Inspector
Graeme Jolliffe – NZ Police representative
Captain Jocelyn Smith – Objector – The Salvation Army
Michael Douglas – Witness for the Objector
Phillipa Mills – Witness for the Objector
Deborah Savin – Witness for the Objector
Mark Saunders – Assisting the Committee

[1] This Hearing concerns an application by **Progressive Retails Limited (Progressive)** for an off-licence in respect of premises situated at **1B/300 Lincoln Road, Christchurch**, to be known as **Merchant's Liquor**.

[2] The Hearing was as a result of an objection to the application from The Salvation Army (SA). At a Hearing of a preliminary matter concerning the status of objectors, held on 19 October 2020, this Committee had determined the organisation has status under the Act pursuant to section 102(1) of the Act.

[3] The sole director of Progressive is Manpreet Kaur (to be referred to as the Applicant). The Applicant was represented by counsel, Mr Evans. The Hearing involved an application for an off-licence for an address that had not been previously licensed.

[4] The application resulted because the Applicant had purchased an existing off-licence which she is operating under a Temporary Authority on the opposite side of Lincoln Road and within 140 metres of the address which is the subject of this Hearing. The intention is that if this application is granted the existing bottle store will close and the licence will be surrendered. In explanation, there is no procedure under the Act to transfer the licence as the licence is for a physical address.

[5] The application was duly advertised and two public objections were received; there were no notices of desire to be heard and no opposition from the Alcohol Inspector, the NZ Police or the Medical Officer of Health. A status Hearing has been held and one of the objectors, SA, was found to have status. The other objector was found not to have status on the grounds of not having an interest greater than a member of the public generally.

[6] The first of the objectors was Captain Jocelyn Smith from SA, who described herself as a Corps Officer/Senior Pastor and Community Ministries Director of the Sydenham Salvation Army. She stated she works in partnership with the Salvation Army Bridge Programme in Addington, and the Addington Supportive Accommodation Centre.

[7] She described to the Committee of being advised by an internal email from another part of the organisation that they had found on the City Council website a notice advising of the lodging of an application for an off-licence in the same block of shops as the SA Family Store at Addington. Captain Smith said she had the authority to speak on behalf of the Salvation Army and to confirm this she produced a letter from the National Director concerning this particular application.

Evidence of the Applicant

[8] Manpreet Kaur gave evidence by reading a prepared brief. She said, Progressive Retails Limited known as Merchant's Liquor at 283-291 Lincoln Road, operates as an off-licence and will be referred to as the current premises. Progressive has secured the lease for an empty store across the road in Addington Mall. (Both premises have off-street parking in front of them). The two premises being approximately 136 metres apart.

[9] The Applicant owns another off-licence in Sockburn, Christchurch, and the licence and renewal of these premises were not opposed.

[10] The new store was purchased on 3 August 2020 and the Applicant stated she thought the location was unsuitable and wanted to locate the store to the other side of the road to be able to attract customers who were on their way home. It was always intended the current store would close on 6 August 2020, the applicant applied for a new off-licence at the new store. (The Act does not allow the current licence to be transferred across the road).

[11] The Applicant circulated to premises in the area a memorandum which was produced in the bundle of documents to the Committee, detailing what was proposed and in particular gave copies to both SA stores in the area and Christchurch Bridge Addiction Treatment Centre (part of the SA).

[12] The Applicant said there were no objections until the final day when Captain Smith on behalf of the SA lodged an objection. On 1 September 2020, a meeting was held which the Applicant attended together with Christchurch Bridge Organisation, the Pharmacy owner and other neighbours of the current store. Minutes of that meeting were presented to the Committee.

[13] At the meeting the SA expressed their concerns that residents in the Residential Accommodation Centre struggle from or are in recovery from addiction to alcohol. They felt the presence of an alcohol outlet on the new site would be counterproductive to their recovery. The Applicant noted that those who were referred by the SA to their Family Store (the Family Store would be right next to the bottle store if this application was to be granted), could be “diverted” and use their money on alcohol rather than family items. Some of the residents at both programmes and others who attend daily, weekly or monthly programmes visit the store to purchase cheap clothing and other items. Some even work there on a voluntary basis.

[14] The Applicant stated she was aware of the SA store and the centre (Bridge Centre) located at 62 Poulson Street some 750 metres away from the new site and there was a minimal difference in distance between the current site and the new site. The Applicant said she did not believe the location change would impact on those living in the residential centre.

[15] The Applicant said she expressed genuine willingness to engage with and work with the SA to reduce any potential harm to the community and had invited the SA to meet with them and educate them on the harmful impact of alcohol on society.

[16] The Applicant commented on the location of other SA Family Stores and their location in relation to bottle stores, the Family Store at Hornby is right next door to a Super Liquor outlet. She said the SA supportive accommodation is significantly further away and the customers are not forced to walk past the proposed liquor store.

[17] Ms Kaur concluded her evidence by saying they had a good relationship with their neighbours and did not believe the level of harm in the community would be increased by shifting the store across the road.

[18] Counsel asked the Applicant about vandalism and she replied none in the two years at Sockburn and none at Addington.

Cross-examination

[19] Constable Jolliffe asked the Applicant if Merchant’s Liquor was part of a liquor chain and the applicant replied Bottle ‘O’.

[20] Captain Smith asked the applicant how does she know there is not alcohol harm and she replied that she had not noticed any. When asked if she had done any research, she replied “no”. She saw an opportunity in Addington mall and it made better business sense, commenting it was never the intention to have two bottle stores so close together. The new location would attract more traffic being on the out of town side of the road.

Questions from the Committee

[21] The Committee confirmed the hours being sought and the hours the store was likely to be operating, the hours being 9.00 am to 11.00 pm, but the operating hours would vary most likely to be 10.00 am to 10.00 pm.

[22] Asked if the franchise company have any requirements the Applicant has to follow, the Applicant replied just to advertise the monthly Bottle 'O' specials each month. There is no requirement for that to be advertised outside the store and she confirmed all advertising would be from within the store. Questioned over what are called single sales the Applicant replied there would be no single sales and packs would not be broken down. Any damaged packs would be returned to Bottle 'O' or dumped.

Objector's evidence

[23] Captain Smith opened with a submission that the objection was to a liquor store in close vicinity to a SA family store in what she described as a "safe zone".

[24] The Captain reading from a prepared brief introduced herself and described her role in the Salvation Army. She spoke of the mission of the organisation: "To care for people, transform lives and reform society". She described the demography of the Addington area which is seen as one of the poorer suburbs with large numbers of residents living in Council flats. While there has been a rejuvenation since the earthquake the residential demography has remained unchanged.

[25] The SA Supportive Accommodation in Poulson Street had existed at that location for 120 years. Up to 79 men can reside there on any given night. This is approximately 750 metres from the proposed bottle store. She said the reasons for clients to use the Centre vary but homelessness is a common denominator. Next door, in Collins Street, the SA Bridge Programme operates a residential addiction service centre where there can be up to 19 people living there at any one time. They all have one thing in common in that their lives have been ravaged and ruined by alcohol and or other drugs of addiction.

[26] Alongside this residential programme, a further 100+ persons are involved in aftercare services with a further 30-40 being supported in the Bridge Education Programme in managed addiction recovery. This means that in any given week the SA is proactively working with 250 people and their whanau through these two centres alone.

[27] In addition to this, the SA operates two stores in the immediate area, a Family Store which has been at that location for a number of years and another store selling low-cost furniture. The Family Store has about 900-1200 customers through the door every week. Store staff advise that 50% of these shoppers are families with children.

[28] The Captain saw the proposed repositioning of a Liquor Store to within metres of the Family Store 'safe-haven' increases the vulnerability of those already at risk.

[29] Captain Smith referred the Committee to s. 105(1)(a) of the Act and stated the risk for increased harm in this instance is the close proximity of the Family Store to the proposed bottle store. Those visiting the Family Store are likely to be vulnerable through poor mental health, addiction craving and then having to confront their debilitating disease.

[30] She then contrasted the existing store which is across Lincoln Road at the rear of the car park. It's not visible from anybody visiting the Family Store. The applicant said that they are just moving across the street but clearly it is not as simple as that or the Applicant would not be seeking to relocate across the street to gain more custom.

[31] The witness drew our attention to s. 106 of the Act, which relates to considering the effect of issue or renewal of the licence on amenity and good order of the locality. She said

the family store had until recently attracted mainly foot traffic and pointed to an increase as people chose to purchase and drink their alcohol in the car park or on the streets around the Family Store with a potential increase in vandalism, vagrancy and nuisance behaviours. Captain Smith then expressed general concerns over alcohol with the vulnerable residents in the area.

[32] Captain Smith concluded by saying that she contended that this licence would significantly increase the temptation to the large demography of Addington's challenged and vulnerable people, including those in residential or post residential SA programme, and it is not a question of the number of licences in the area, but the "purposes for which land near the premises concerned is used"; that makes these premises unsuitable for a liquor outlet.

Cross-examination

[33] Mr Evans, Counsel for the Applicant, put it to the witness that the original letter of objection was factually wrong and that this was not going to be an additional bottle store and that if the application was granted the current store would close. The witness agreed. It was put to Captain Smith that her objection was about the wider principle of alcohol harm and she agreed it was.

[34] The witness was questioned about the lease on the Family Store premises and she agreed there were only 3 months left on the lease but there was a right of renewal. The SA had been looking at combining the Family Store and the furniture store into one store but they had been looking for some time and had not been able to find anything suitable. It was put to Captain Smith that if SA moved the Family Store, it may remove the need for objection and she replied there was the wider issue of alcohol harm and the proximity to the accommodation centres.

Captain Smith then called a number of witnesses

[35] Phillipa Mills was called and she said she was the Operations Manager at the SA Addington Supportive Housing and has worked at this site at 62 Poulson Street, Christchurch for over 23 years. Her role is the case management of 78 tangata whaiora (persons seeking health) on that site and a further 12 at a complex on Bealey Avenue. She also has responsibility for 25 community properties scattered across the city as well as two family stores one of them being next door to the proposed bottle store.

[36] Ms Mills explained the Centres have a zero tolerance to alcohol and drugs and having and/or being under the influence of either is a breach of the residency agreement. A tangata whaiora who breaches this therefore has to leave. Ms Mills commented that moving a bottle store next door to their store will make it slightly easier not having to cross a busy road and this increases the likelihood that their accommodation will be terminated to a breach of the rules rendering them homeless. The fact that a bottle store is going to be sited next door to their family store, Ms Mills continued, presents for tangata whaiora already facing additional challenges with the possibility of this being a trigger to start drinking by a visit to our Family Store.

[37] Ms Mills said the proposal by the Applicant has caused her heightened concern as based on her experience managing alcohol affected tangata whaiora.

[38] Deborah Ann Savin gave evidence of being the Consumer Advisor for the SA Bridge Programme. Her role is to be a collective voice for the tangata whaiora. She explained that

SA the direct impact of serious addiction on tangata whairora and support a vulnerable population who are at an increased risk of relapsing and this relapsing can lead to insanity, jail or death.

[39] The witness said placing the bottle store next to our family store will increase the likelihood of relapse.

[40] Counsel for the Applicant in cross-examination asked the witness was she saying that all the people who sell alcohol are causing death and violence and she replied no.

[41] Michael Douglas gave evidence of being the National Operations Manager Alcohol and other Drug Services for the SA. The SA operates 17 bridge services throughout New Zealand and for the last 12 years he has worked in senior management roles in both mental health and addiction services.

[42] In Christchurch, the Bridge programme is funded by the Canterbury District Health Board and provide 16 residential treatment beds for alcohol and other drug addiction services at 35 Collins Street, Christchurch. He said in the year ending September 2020 they had supported 671 tangata whairora equalling 4900 bed nights. These services are approximately 740 metres from the proposed bottle store.

[43] Mr Douglas detailed the strong objection the SA has to this application for an off-licence adjacent to the Family Store frequented daily by tangata whairora who are experiencing significant harm. He said the large majority of alcohol-related research indicated that reducing the trading hours of the licensed premises and the number of outlets are two of the most effective measures that would contribute to fulfilling the stated object of the Act.

[44] Asked by Captain Smith as to the percentage of the population the Bridge programme works with he replied 3% of the population and in his opinion, there were 400,000 problematic drinkers in New Zealand.

[45] Mr Douglas advised that the SA would not oppose the renewal of the off-licence on its current site but strongly opposed it being shifted next to the SA store.

[46] Captain Smith had another witness she was going to call but due to ill health he was unable to attend the Hearing but his brief had been supplied in the bundle of documents. This person was Brent Clinton Tohairiki, operations manager for the Christchurch Bridge Programme for almost 10 years. He sees the devastating effects of alcohol and other drugs on a daily basis. The main point he made was that he believed the liquor industry has a moral responsibility to look after the community with sufficient safeguards to protect vulnerable people and this includes thoughtful consideration of venue placement. The Committee noted this document and gave it the weight it should give when the person did not give sworn evidence at the Hearing. It was noted that most of his evidence concerned evidence which had been said by other witnesses.

[47] Mr Douglas was asked if the clients of the Bridge Programme buy alcohol and then want to go back to the accommodation centre. He replied they will often hide it at people's property in the area, hedges and that sort of place as they cannot bring it back to the Bridge Centre.

[48] Asked by the Committee how many Bridge programmes there are in the South Island Mr Douglas replied that there is the one in Christchurch and there is a smaller one of about 8

beds in Dunedin. He also added that a small non-residential day programme on the West Coast has recently been established.

Closing Submissions

[49] In her closing submissions Captain Smith said the SA sees the worst of the effects of alcohol, people losing their home, their job, hope and freedom. Some end up in prison because of addiction but with help, we offer a way to recovery. She said it's not about good management of the bottle stores, it's about the location and the 1500 persons that come into our Family Store every week. She ended her submission with the words "They may think they don't count but somebody has to care for them".

[50] The Inspector had put it to Captain Smith that there had been no evidence adduced that there is a special problem in the area and in fact it is a small problem. Captain Smith had interjected saying the SA are doing what they can. The Inspector invited the Committee to read his submissions which covered what he wanted to say. He added, that if the alcohol dependent want to get alcohol, they will.

[51] Counsel for the Applicant in his closing submissions referred the Committee to his pre-circulated submissions, speaking to these, and also at the hearing produced to the Committee a folder of documents entitled 'Index to Applicants Bundle of Documents Etc.' which detailed sections 4, 105, 106, 117 of the Act, and two pieces of case law.

[52] He asked the Committee to look at the law, in particular, there is no evidence of a conflict with section 105 particularly subsections 105(h) and (i); in relation to amenity and good order. Counsel said it has not been shown the amenity and good order is affected by more than a minor extent. He was not criticising the SA, they do laudable work but in this instance, the concern is for only 3% of the population, and that is about the need for a "civil discussion" about alcohol laws.

Discussion

[53] The premises in question are in Addington which is an older suburb about 2 kilometres from the centre of Christchurch. The premises are in a car park off Lincoln Road which is on an arterial road leading out of town towards Akaroa. It is a mixed area of older lower socio-economic housing and commercial premises. It has changed since the earthquake of 2011 and missed the worst of the damage. In the rebuild, the town side of Addington quickly became an area where large commercial buildings were built in the years after the earthquake.

[54] It always had a small hospitality area immediately along Lincoln Road, which after the earthquake came under pressure from the hospitality industry because of the closure of the central business district. There were about two or three taverns and a similar number of restaurants and some cafes. Since that time and until the present day it has established a thriving restaurant/cafe trade. The premises in question is in an area known as Addington Mall, which is an open car park with shops around the outside. This car park is almost on the south eastern corner of Lincoln Road and what is known as Clarence Street South. The existing bottle store is in a car park on the north western corner of Lincoln Road and Clarence Street South. There is a traffic light controlled pedestrian crossing approximately in front and to one side of the two-car parks. Both the premises in question are at the back of the car park in relation to Lincoln Road. The SA Family Store has been at that location for some time and

are well known to Addington residents. As noted at para [34] the SA was questioned by the Applicant's counsel as to the length of time left on the lease of the Family Store. The Committee notes that leases/renewal were handled by the Auckland office and while the Christchurch SA would like new premises to combine their two separate stores, the family store and the furniture store in the Addington area, Captain Smith commented they had been looking for such perfect premises for ten years so were likely to end up renewing.

[55] It can also be said for the Bridge Programme Accommodation and Residential Centre in Poulson Street they have been at that location for some time and are well known to Addington residents. Both have become an institution in the area. Poulson Street is not on an arterial road and is very much on a back street of Addington. Various distances have been given as to the distance between the accommodation centres and the Family Store, there are several ways of walking/driving to the Addington Mall and what could be thought of as the back entrance leads more or less directly to the accommodation centre. It is the Committee's understanding that the Family Store will have the proposed bottle store on the left-hand side of the Family Store. This means that persons walking from the Accommodation Centre are most likely to walk near the front of the bottle store.

[56] In her evidence, the Applicant gave evidence concerning the operation of a bottle store as she is currently operating two stores, one in Addington and one in Sockburn, another suburb of Christchurch. The Committee has no concerns over her suitability and other matters under section 105 other than subsections 105 (h) and (i).

Section 105: Criteria for issue of a licence:

- (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.

[57] The Committee acknowledges that in the area between the Family Store and the 'safe-haven' between there and the SA Residential Accommodation there will not be an increase in licensed premises. This is due to the Applicant's stated intention of surrendering the existing licence if this application was to be granted.

[58] The Applicant has given some thought to the application and shown a willingness to work with the SA and the community and attended a meeting at which minutes from the meeting were produced to the Committee.

[59] While the Applicant covered off what the Applicant thought the Committee needed to hear in relation to the application, it appeared to the Committee that she had not turned her mind to section 106 (1)(b) and had no consideration of the impact of this section on the application.

[60] Captain Smith from the SA gave evidence establishing the role of the Salvation Army in the community. In the Committee's view there is the very real possibility that if this application was granted there is a likelihood of an increase in alcohol-related harm due to its location next to and between the Family Store and the Accommodation Centres 750 metres away.

[61] The witnesses called by Captain Smith, in particular Mr Douglas, all gave powerful evidence of the harm caused by alcohol and the role of the SA in community affairs. The Accommodation Centre has been in that location for over 100 years and is the only one of its type in the Christchurch area receiving referrals from the Christchurch District Health Board including persons remanded from the Court. The rules of the centre are such that a breach of the rules around intoxication or possession of alcohol or drugs results in being banned from the establishment. The Accommodation Centre deals in the large part with homeless persons so if they are tempted by the proximity of a bottle store in the area they frequent then often it is the end of the road for them likely meaning a life on the street.

[62] Both Captain Smith and Mr Douglas spoke of the nature of addiction and that it was not clearly defined what could cause a relapse. A study of addiction had shown that walking past a shop, being reminded of something in their past can trigger a relapse and a return to the harm caused by alcohol.

[63] The evidence of the Salvation Army convinced the Committee that the vicinity around the Family Store is an area of special significance, and any reasonable person would consider it to be a special site. In this regard the Committee believes that section 106(1)(b) is relevant, which reads:

In forming an opinion for the purposes of section 105 (1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the [...] licensing Committee must have regard to- [...]

- (b) the extent to which the following purposes are compatible:

- (i) the purposes for which land near the premises concerned is used:
- (ii) the purposes from which those those premises will be used if the licence is issued.

[64] This is commonly known as a location with a special purpose, and the Committee has looked at the Alcohol Regulatory Licensing Authority (ARLA) case of ***Karikari Charitable Trust Inc v E R Bellas Ltd [2020] NZARLA 106*** in this regard.

[65] In this case, the Authority found that a “sensitive site” being an early childhood centre was considered vulnerable because the site’s vulnerability was heightened by the remoteness of the premises and a lack of compliance checks of the premises by the reporting agencies. At para [25] the Authority made the comment:

The object of the Act is the minimisation of harm it logically follows that any extension of time at which alcohol may be consumed increases the risk of harm and when that harm is most likely to impact tamariki, the most vulnerable in our community that is unacceptable.

In this instance, we have a vulnerable site, the Family Store frequented by addicts and in relatively close proximity to the main residential course in the South Island for the treatment of those addicts.

[66] The Sale and Supply of Alcohol Act 2012 was implemented after a report by the Law Commission: *Alcohol in our Lives: Curbing the Harm*, published in 2010. Parliament recognised that excessive drinking and intoxication was contributing to crime rates, road accidents; and health issues.

[67] Major changes were introduced to the object section of the legislation. Section 4(1) of the 1989 Act states that its object was to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contribution to the reduction of liquor abuse. While the 1989 Act was concerned about reducing liquor ‘abuse’ the concept of “harm” is central to the new Act and is very broadly defined.

The “object” of the 2012 Act is set out in section 4:

Section 4: Object

- (1) 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).

The term “alcohol-related harm” is defined by s 5(1) of the 2012 Act:

alcohol-related harm—

- (a) means the harm caused by the excessive or inappropriate consumption of alcohol; and
- (b) includes—
 - (i) 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
 - (ii) 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 subparagraph (i)

In the High Court decision of *Re Venus NZ Ltd*,¹ Heath J stated as follows:

“Although the “object” of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the “object” of the legislation. It seems to me that the test may be articulated as follows: is the Authority satisfied, having considered all relevant factors set out in s 105(1)(b)–(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act? “

As Gendall J said in *Christchurch Medical Officer of Health v Vaudrey*.²

“if the object of the Act cannot be achieved by the application, then it cannot succeed”.

[68] From the evidence produced and looking at the wording of subsection 105(1)(h) concerning amenity and good order, the Committee assessed that under that subsection the amenity and good order would be likely to be reduced by more than a minor extent by the effects of the issue of a licence, after it had regard, as it must, to section 106(1)(b) of the Act, which requires the Committee to have regard to the extent which the following purposes are compatible: (i) the purposes for which land near the premises is used; and (ii) the purposes for which those premises will be used of the licence is issued.

[69] The Committee pursuant to section 105(1)(a) of the Act has also had particular regard to the object of the Act as a basis for its decision. Looking at the object section of the Act, subsection 4(1)(b), which states “the harm caused by the excessive or inappropriate consumption of alcohol should be minimised”; there are two words that should be looked at and they are ‘excessive’ or ‘inappropriate’. The Committee notes that these words are separated by an ‘or’, and it could be considered as two types of separate harms. The word ‘excessive’ is clearly understood. However, the word ‘inappropriate’ is open to interpretation and the Oxford dictionary states that one of the meanings is “not proper in the circumstances”, and looking at subsection 4(1)(a) the consumption should be undertaken safely and responsibly. For an addict to continue to consume alcohol, is not proper in the circumstances.

[70] The intention of those two words should be read as both a general responsibility on society but in all instances on the individual. If the person or group of people are not able to consume alcohol safely and responsibly then the purpose of the Act (section 3(2)) is to ensure

¹ [2015] NZHC 1377

² [2016] 2 NZLR 382

the characteristics of the system for the sale and supply of alcohol are that it is reasonable and the administration of the Act helps achieve the object of the Act. The Committee contends that there are times when the individual needs the assistance of the Act to protect themselves from the harm of alcohol consumption especially when the person or persons are not able to help themselves.

[71] Subsection 4(2) goes on to say that the harm talked about in Subsection 4(1) includes: any crime, 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. There are two parts to this subsection, and in the Committee's view part (a) relating to harm caused to the individual, and part (b) harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any of the kinds of harm described above, are both relevant.

[72] In this instance, the Committee was asked to look at a small percentage of our community who in relation to alcohol harm could only be described as the most vulnerable. The Committee contends that section 106(1)(b)(i) would not have been enacted by Parliament if Committees were not to turn their mind to the purposes for which land near the premises is used.

Decision

[73] In this case, the applicant purchased a premises that was an existing bottle store and when a shop across the road became vacant she decided to move across busy Lincoln Road. This was to put the bottle store on the out of town side of the road where she was likely to get more vehicular traffic or whether she found there was a lack of trade at the current premises, the Committee does not know. In our view it does not allow her to move into an area that was proved to our satisfaction to be a 'safe-haven' for homeless persons and members of an alcohol/drug addiction residential course.

[74] After weighing up all the evidence, looking at the sections of the Act and the relevant case law, it is our opinion there cannot be a more clear cut case of risk of an increase in alcohol-related harm in a small segment in the population, in an area of Christchurch which is already socially deprived and facing harm from the cause and effect of unsafe alcohol consumption.

[75] In the words of Gendall J in the Vaudrey case quoted above, "***if the object of the Act cannot be achieved by the application, then it cannot succeed***". This application is declined.

DATED at CHRISTCHURCH this 18th December 2020



PR Rogers
Chairperson
Christchurch District Licensing Committee