

Decision No 60D [2017] 2182

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by Wunderbar
(2006) Limited for an On Licence
pursuant to s.99 of the Act in respect
to premises situated at 17 London
Street Christchurch trading as the
Wunderbar.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE:

Chairman : Mr G B Buchanan
Members: Mr R Wilson (JP)
Mr P Buttell

DECISION ON THE PAPERS.

Hearing at the Christchurch City Council Chambers, CHRISTCHURCH on the 30th August 2017.

APPLICANT

Mr Andrew Bishop Wunderbar (2006) Limited

Introduction

- [1] This decision relates to an application for the renewal of an On licence under section 99 of the Sale and Supply of Alcohol Act 2012.
- [2] This application is for the premises situated at 117 London Street, Christchurch, known as "Wunderbar".
- [3] The premises are situated in the port town of Lyttelton in greater Christchurch City. It is located in the small shopping area of the town, close to both the industrial area and residential areas.
- [4] The Alcohol Licensing Inspector has reported on the application and states that the premise is intended as a tavern and its principal purpose is the consumption of alcohol. These premises have been previously licensed. It has been trading under the provisions of an On- Licence number 060/ON/3/207.

- [5] The hours sought are from 11am till 3am the following day. These hours are within the default national maximum trading hours for an On-Licence, of 8am to 4am the following day.
- [6] The Licensing Inspector and Police do not oppose the license. A member of the public has objected to the licence, principally due to noise concerns. It is this issue which is the main focus for the consideration of this committee.
- [7] The objector has submitted documentation to support his objection and advised the committee that he does not wish to appear personally. He relies upon the documents submitted.
- [8] The premises have been the subject of a decision under section 280 of the Act by Judge Kelly in August 2017 regarding a 48hour suspension for allowing persons to become intoxicated on the premises.

The Application

- [9] Mr Bishop submitted his application for the renewal of the licence on 14 February 2017. The application is complete and includes the information required under the Act, including the applicant's name and address, the address of the premises, the general nature of the business and all the other information required by the legislation .
- [10] Mr Bishop also supplied any additional information requested of him, including the menu offered to patrons and 'Host Responsibility Policy' for the premises.

Reporting Agencies

The Licensing Inspector

- [11] The Inspector's report had been supplied to the committee with the application.
- [12] Mr Ferguson pointed out in his report that the objector, Mr Fitzgerald had objected to the licence of Wunderbar because of the noise at two previous hearings. Since the first objection, the premises have been refurbished with improved cladding and wall linings. He referred the committee to two reports about the level of noise from Wunderbar. One from Marshall Day Acoustics and another from an Environmental Officer Report dated 13 March 2015. They concluded that Wunderbar complied with the noise standards given in the Banks Peninsula District Plan during the survey period.
- [13] Noise has been an issue since the initial hearing in 2004. At that time a total of 109 noise complaints had been made, 90 from the objector Mr Fitzgerald. Since the beginning of 2016 until now there have been only three noise complaints to the council. One of these complaints was not assessed and the other two were found by staff as not excessive.

[14] The reduction in the noise complaints may be related to the changes the applicant has made at Wunderbar, firstly the upgrading of the building and secondly a better understanding of his responsibilities towards the community within which he operates. This is reflected in the willingness of Wunderbar to turn down the music when asked to do so by Mr Fitzgerald.

[15] Mr Ferguson had been contacted by four people who said that they were not affected by any noise from any bar in the Lyttelton area. They contacted the Council after receiving a request to contact the council if they had noise problems from Wunderbar from a 'flyer' put into their letterbox.

Police

[16] Police did not initially object to this application but after the reporting period ended and prior to a hearing date being set they reported that they had taken action against Wunderbar for suspension of the on-licence following compliance visits in January and April 2017 during patrons had been found intoxicated, and requested that the matter be held over until ARLA had dealt with this application.

[17] In a decision on 11 August ARLA suspended Wunderbar's licence for 48 hours for those offences.

[18] After a number of meetings with the applicant to discuss the management of the business, Police advised that matters had been resolved to their satisfaction.

Canterbury Medical Officer of Health

[19] The Medical Officer of Health did not object to the granting of the Licence.

Objector

[20] The complainant still feels that excessive noise is coming from Wunderbar and that it is affecting him in his home in the evenings. He has sought support from other residents, encouraging them to complain, if they are affected by the noise. None have done so. In his letter to the committee Mr Fitzgerald says it is mainly the base sound and vibrations from it, that are of greatest concern.

Decision

[21] All the evidence presented to the committee was considered.

[22] Mr Fitzgerald decided at the last minute not to present evidence before the committee. The committee acknowledges his legitimate objection and concerns. While they are relevant to this hearing his evidence could not be tested, nor questions asked of him. The weight we place on it is a matter for the Committee.

[23] In considering the application for the on-licence, the committee had particular regard to the provisions of section 105(1)(b) of the Sale and Supply of Alcohol Act 2012.

In Deciding whether to issue a licence, the authority or licensing committee concerned must have regard to the following matters :

The object of the Act

The suitability of the applicant

[24] There were no objections from the agencies regarding the suitability of the premises, nor of the hours that were sought. The committee agreed that these were not issues of concern.

[25] There is no doubt that Mr Fitzgerald feels affected by noise. We are mindful of the decision of the LLA re *Paihia Saltwater (2001) Ltd* 4 September 2001

"We do not think it is sufficient to submit that a true test is the number of calls to the licensed premises or Noise Abatement Officer....."

"Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management....."

[26] The committee also considered whether amenity and good order would be reduced if this licence were granted.

In Page v Police (unreported HC v Christchurch AP 84/98 24 July 1998) Panckhurst J commented on the issue of suitability in this way.

"Section 13(1)(a) provides that the applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding. That implies an onus upon the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of the particular case: for example, the place, the intended business (here in a difficult central city location), the nature of the business itself, the hours of operation and the intended activities, provide the basis for the assessment of the individual."

[27] The objector detailed the problems that he had with the noise from the premises and acknowledged that there is a level of co-operation by the applicant to 'turn down' the music. We do not think that the applicant is operating without consideration of the community and the impact of excessive noise.

[28] The suitability of the applicant was considered and a balanced approach was taken, considering all the factors and information and recommendations from the agencies.

[29] In the present case Mr Bishop has gone to some lengths to improve the premises and remain involved with the community to ensure that his premises do not unduly affect nearby residents.

Pohia Saltwater 2001 Ltd LLA PH 3911/201.

a. "We will always give full credit to those holders who acknowledge any existing noise problem and try and do something about it. In our view the term 'host responsibility' does not exclude the people who live nearby.

b. Many licensed premises have shown that they can operate in harmony with their residential neighbours. It is no coincidence that the managers and owners of such premises also show a commitment to the reduction of liquor abuse."

[30] The committee considered all the evidence and did not believe from the evidence given, that noise could be considered a disruption of good order, to more than a minor extent at present and should not prevent the granting of this licence.

[31] That said it will always remain the responsibility of the applicant to do all he can to mitigate the noise emanating from his premises. This will include keeping doors shut, controlling the volume of the music and at times may include getting readings of the level of the noise taken by a sound engineer. These actions are a proactive approach to mitigate a matter which is still an issue for the objector.

Decision

[32] I am satisfied as to the matters which we must have regard to as set out in s.105 and 106 of the Act and we grant the licence for a period of 3 years, pursuant to s.130.

[33] The systems and Policies in place are applicable for licenses of this kind.

[34] Section 119(1) of the Act will apply to these premises. The entire premise is to be designated as a supervised area. Minors must not be admitted to these premises unless accompanied by a parent or guardian.

[35] The applicant's attention is drawn to s.259 of the Act which makes it an offence to fail to comply with certain requirements and restrictions imposed by or under this Act; specifically sections 46 to 63 and 231(1).

[36] The applicant must comply with all conditions specified on the licence.

Conditions

The licence will be subject to the following conditions:-

Discretionary conditions – section 110 (1)

(a) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:

- **Display of 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.**

- (b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
- Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.

Compulsory conditions – section 110 (2)

The following conditions are compulsory:

(a) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day to any person who is not present on the premises to dine.

(b) Alcohol may only be sold the following days and during the following hours :

Monday to Sunday 11.00 am to 3.00 am the next day

(c) Water must be freely available to customers on the premises while the premises are open for business.

Section 117 – Other Discretionary conditions

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

The licensee must implement and maintain the steps proposed in their host responsibility policy aimed at promoting the reasonable consumption of alcohol.

Other restrictions and requirements

Section 50 – One-way door restrictions in local alcohol policies to be complied with

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

All areas of the premises, are to be designated as supervised.

THE LICENSED PREMISES

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

DATED at CHRISTCHURCH this 1st day of September 2017



Chairperson
Christchurch District Licensing Committee