

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Symbur Holdings Limited for an Off-Licence pursuant to s.99 of the Act in respect of premises situated at 1 Aymes Road Hornby, CHRISTCHURCH, and trading as Super Liquor Hornby.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE:

Chairman : Mr G B Buchanan
Members: Mr P Rogers
Mr A Lawn

Hearing at Christchurch City Council Chambers, CHRISTCHURCH on 2nd November 2017.

APPEARANCES

Ms A Lavery; Christchurch City Council Licensing Inspector
Sergeant D Robertson for NZ Police
Ms P Williams on behalf of the Medical Officer of Health

Mr W Hawker an objector.

APPLICANT

Ms B Symon

Introduction

- [1] This decision relates to an application for an Off Licence, to operate a bottle store, under section 99 of the Sale and Supply of Alcohol Act 2012.
- [2] This application relates to the premises situated at 1 Amyes Road, Christchurch.
- [3] This application is due to a change of ownership of the business.

Status Hearing

- [4] The applicant currently operates an Off-Licence in another area of Christchurch. She has done so for a number of years.
- [5] The premises that the applicant wishes to operate from at 1 Amyes Road is an existing bottle store.
- [6] There are a number of existing On and Off licences in this area. As well, there is a shopping area with two supermarkets nearby in Hornby Mall.
- [7] The agencies do not object to this application.
- [8] There is one public objector who lives a considerable distance from the applicant premises.
- [9] A hearing was held to determine the status of the objector.

The Objector

- [10] Mr Hawker has objected to the application for this Off-Licence. He submitted his objection in writing and within the prescribed time frame.
- [11] In Mr Hawker's objection dated 4th September 2017, he said that he believed that he had an interest greater than the public generally because "he was a victim who suffered serious harm due to the actions of someone seriously affected at the time by alcohol".
- [12] He gave evidence to the Committee that victims who suffered serious harm should be considered as persons of greater interest than the public generally.
- [13] Mr Hawker said that as he had suffered serious harm from someone under the influence of alcohol, he was wanting to become a spokesperson, to speak on behalf of victims, as he had knowledge of the effects of the harm alcohol can cause. This, he said was a similar role to that of the Medical Officer of Health or the Licensing Inspector. These agencies would be speaking on other aspects of the harm caused by alcohol.
- [14] Mr Hawker also expressed the view that alcohol, despite where it is sold, does not choose in which areas of a city or community harm is inflicted. He did not think that a 1 kilometre radius around the applicant premises was a good criteria. He said that he had suffered his harm more than 4 kilometres from where the offender had last consumed alcohol.
- [15] Mr Lawn asked if a person who was a victim of alcohol influenced crime in Wellington could therefore object to a licence application in Christchurch. Mr Hawker said that potentially they could. He said that there had to be an avenue for victims of crime.

[16] Mr Hawker said that he did understand that there was an avenue for the community to have a say in the alcohol policy in Christchurch, through the Local Alcohol Policy (LAP). He said that currently there was no such policy in place in Christchurch. Mr Hawker said that he was not aware of that process at that time, so did not put in a submission.

[17] Mr Buchanan asked if he represented any group as a victim of crime. Mr Hawker said that he did not but these people did not have a voice. Some had died as a result of the actions of others and could not represent themselves.

Decision on Status of the Objector

[18] The District Licensing Committee must decide if the objector “has an interest greater than the public generally”.

[19] This Committee has resolved to determine the matter of the objectors status at the time of the hearing in the substantive application for the Off licence.

[20] In *Janhurst Holdings Ltd* (2013)NZARLA PH826, the judge discussed the process to decide the objectors status.

(17)The authority appreciates that the determination as to the status of an objector must be made at the time the application is heard.

[21] The applicant, Ms Symon, Licensing Inspector and Medical Officer of Health made written submissions to the committee regarding the status of the objector.

[22] The ability of people to object to a new alcohol licence is outlined in section 102 of the Act:

Section 102 Objections to applications

(1)A person may object to the granting of a licence if he or she has a greater interest in the application for the licence than the public generally.

(2)An objection must be in writing and filed with the licensing committee within 15 working days after the first publication of the public notice of the making of the application.

[23] Objectors must show that their interest in the application and its potential to affect them is not simply as a general member of the public. This must be ‘greater than the public generally’. Parliament did not define what that interest should be and I refer to case law for some guidance in this matter.

In *Liquor World* (2009) NZLLA 1189 (16 October 2009)

“... How people establish an interest in the application that is greater than any other member of the public, is a matter of judgement. In this case the inspector has suggested a circle with a radius of one kilometre within which the objector must reside, or have a business that could be affected. We think that although the proposal is generous, it is a fair and realistic suggestion.”

[24] In the current case, Mr Hawker lives approximately 15 kilometres from the applicant premises. He is therefore unaffected by the activities associated with the operation of the bottle store.

[25] The Authority has also provided some guidance on this matter in *Eastern Food Naanae Limited, re (2003)NZLLA 301*

In *Purification Technologies Ltd V Taupo District Council* (Decision W 10/95) (1995) NZRMA 197, an issue arose as to what was meant by “*Having an interest in the proceedings greater than the public generally*” under s274 of the Resource Management Act. Applying Australian authorities, the Planning Tribunal held:

“... on the true interpretation of the section, the interest in the *proceedings greater than that of the public generally which qualifies a person to appear and call evidence must be one of some advantage or disadvantage, such as that arising from a right in property directly affected, and which is not remote*” (my emphasis)”

[26] Mr Hawker has given no evidence that he is in any way affected by the location of the applicant premises.

[27] Mr Hawker seeks to represent other victims of alcohol influenced crime. He has no mandate to do so. The three agencies appearing before this committee represent victims of crime, including instances where alcohol is a factor. There are representative groups working in the community with those for whom alcohol is a factor in their lives and behaviour. These groups are likely to have some standing as a person greater than the community generally. The eligibility of these groups to appear before the Committee will be assessed in each individual case.

[28] As a victim of a crime himself, where alcohol was a factor, Mr Hawker seeks representation as a person with an interest greater than the public generally. As an individual victim, he is a member of the general public.

[29] It is an unfortunate fact that there are many individual victims of crime of one sort or another making up the general public individually. As a member of the public, Mr Hawker has no interest greater than the public generally.

[30] Taken overall, we have concluded that Mr Hawker does not have an interest greater than the public generally and therefore does not have the status to object to this application.

Police

[31] Police did not oppose the Off-Licence application.

Canterbury Medical Officer of Health

[32] Ms Williams did not oppose the Off-Licence application.

Licensing Inspector

[33] Ms Lavery did not oppose this Off-Licence application.

DECISION

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

[35] There is no LAP in place for Christchurch City.

[36] In considering the application for an Off-Licence the committee must have regard to Section 105 and 106 of the Act.

Section 105 Criteria for issue of licences

Subsection (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.**

Subsection (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.

[37] The suitability of the applicant has not been raised as an issue for this committee to consider. Ms Symon operates an existing bottle store in Christchurch.

[38] The over-riding principle which must always be considered when assessing an application for an off-licence, is the object of the act, as established in *My Noodle Ltd v Queensland Lakes District Council* (2009) NZCA 564. More recently in *Venus New Zealand* (2015)NZHC 1377. Heath J said

“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 s105(1)-(k) of the 2012 Act, that the granting of an off-licence is consistent with the object of that Act

[39] The Committee finds on the evidence presented, that the applicant company is suitable to hold an Off-Licence and the application is granted

[40] 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.

[41] The Committee is satisfied as to the matters which we must have regard to as set out in s.105 of the Act and we grant the licence for a period of 1 year pursuant to s.130.

[42] The licence will not issue until all relevant clearances have been obtained. The applicant is not entitled to sell alcohol until the licence is issued. Unlicensed sales may result in imprisonment for up to three months or a fine of \$40,000 (sec 233 (a) and (b) of the Act).

[43] 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. 231(1).

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

[45] The licence will be subject to the following conditions and all other conditions as identified on the licence.

[46] The licence may be issued on payment of the annual fee payable in accordance with regulation 15 of the Sale and Supply of Alcohol (fees) Regulations 2013.

Compulsory conditions

The following conditions are compulsory:

(a) No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day.

(c) Alcohol may only be sold or delivered on the following days and during the following hours:

Monday to Sunday 7.00am to 10.00pm

(d) Water must be freely available to customers, while alcohol is being supplied free as a sample on the premises.

Discretionary conditions

(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 and supplied on the premises in accordance with the premises plan submitted with the application.

(c) 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.

Conditions applying to all remote sales for the sale and supply of alcohol:

(a) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on every receipt issued for any alcohol sold via the internet site:

(b) The licence holders name, the licence number, and the date on which the licence expires.

(c) A copy of the licence or a clearly identified link to such an image must be displayed in a prominent place on the internet site.

(d) The following steps must be taken to verify that people are over the purchase age:

(i) In the case of an order made using an internet site, telephone order, or physical order – the prospective buyer must declare that he or she is 18 years of age or over (and where the prospective receiver is involved that the prospective receiver is also 18 years of age or over) –

(i) Once when the prospective buyer first commences the order process; and

(ii) Again, immediately before the sale of alcohol is complete

Other restrictions and requirements to be noted on the licence

Section 56 – Display of signs

Section 57 – Display of licences

Section 59 - Requirements relating to remote sales by holders of off-licences

Section 212 – Manager to be on duty at all times and responsible for compliance.

THE LICENSED PREMISES

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



DATED 13 November 2017

Mr G Buchanan

Chairman Christchurch District Licensing Committee