

Decision Number 60C [2018] 2992

IN THE MATTER of the Sale & Supply of
Alcohol Act 2012

AND

IN THE MATTER of an application by
BRITISH BASEMENT LTD
for renewal of an On-
Licence pursuant to s127
of the Act in respect of
premises known as British
Basement aka The Hellfire
Club situated at 10
Oxford Street, Lyttelton.

RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson Mr R.J.Wilson JP
Members Ms C. Robinson
Mr D. Blackwell OSM

HEARING AT CHRISTCHURCH ON THURSDAY 1 NOVEMBER 2018

PRESENT Ms R. Dixon, British Basement Ltd, Applicant
Mr R. Ward, Counsel for the Applicant
Ms J. Ramsay, District Licensing Inspector in opposition
Constable G. Jolliffe, NZ Police in opposition
Ms Paula Williams for the Medical Officer of Health to assist
Ms Gemma Dwane, Christchurch City Council
Snr Constable G. Prescott, NZ Police
Snr Constable H. Bouma, NZ Police
Constable G. Craddock, NZ Police
Mrs J. Anderson, Hearings Adviser, CCC

INTRODUCTION

[1] We are dealing with an application by British Basement Ltd (the applicant/licence holder) for renewal of an On-Licence pursuant to s127 of the Act in respect of premises situated at 10 Oxford Street, Lyttelton known as British Basement also known as The Hellfire Club. The applicant also seeks a variation to the opening hours to allow trading until 3 am. The matter was originally brought before the Committee on 4th October 2018 but Counsel for the applicant, who had just been appointed, requested an adjournment to take instructions and prepare for the hearing which resumes today.

[2] The licence for these premises expired on 13th February 2018 and this is the first renewal hearing. The licence remains in force because the application for renewal was lodged in time. There were certain irregularities with respect to timelines relating to the public notices but no one appears to have been disadvantaged. A waiver has been granted pursuant to s208. The matter has been very slow getting to the Committee which is of some concern. The Inspector has explained that she and the other Agencies have been working with the licence holder in an attempt to improve compliance and has only recently formed the view that she must oppose the renewal.

[3] After explaining the process the Committee intended to adopt in conducting the hearing, the Chairperson raised the Committee's concerns about the nature of some of the evidence which the Inspector and in particular the NZ Police intended to produce. In the course of cross examination the applicant may be put in the position of self incrimination were she to answer. The Committee had no wish for this to happen and urged Agencies to so frame their questions as to avoid this risk where possible. Counsel for the applicant was invited to be active in objecting to questions that in his opinion put his client at risk. The Committee also made an order pursuant to s203(5) of the Act prohibiting the publication of any report or description of any part of the proceedings. The prohibition extended to social media. That order remains in perpetuity.

[4] Mr Ward raised the issue of the late disclosure of evidence and in particular a video supplied to him by the Inspector only hours before the hearing. He had not been able to play it for technical reasons and sought a further adjournment so he could do so. The Committee was reluctant to adjourn the hearing for more than a short time but offered to vacate the hearing room to allow Counsel and the

applicant to view the video privately using the facilities available. This was agreed to and the hearing adjourned for half an hour.

OPENING STATEMENTS

[5] Mr Ward accepted that there had been issues with the running of the premises and these were acknowledged by the applicant's sole director and shareholder, Ms Rosalind Dixon. Ms Dixon now recognised that she was unable to manage all the tasks effectively on her own. She had recently engaged the services of a person to deal with the catering. She had organised Duty Managers and someone to handle security for bigger events. After some confusion as to what was required she now accepted that patrons could not sit at furniture on the footpath or drink there. Mr Ward submitted that the licence holder had met the object of the Act in that the premises had been used for a variety of art and music events in line with the undertaking given in the original application for a licence. Mr Ward submitted that there is no evidence of alcohol related disturbances or offences. With respect to the suggestion that the premises were being used for drug taking Mr Ward said the applicant was opposed to drugs but acknowledged that she may have lost control for a time during her recent illness and following the death of her father. He submitted that she was now in full control again and would not tolerate such behavior. The applicant only wanted the licence renewed until February 2019 when her lease would expire. This would enable her to trade during the busy time of the year and hopefully recoup some of the losses incurred over the winter. It would also enable her to put on various art and music shows and to close her business on a positive note. He would seek to table letters of support from people in the arts community in Lyttelton and further afield.

[6] Ms Ramsay, a District Licensing Inspector, opposed the renewal of the licence. She had delayed bringing the matter before the Committee as she had been actively working with the applicant, as had the other Agencies, to try to achieve compliance in respect of a number of breaches of the conditions of the licence which had been occurring almost from the day the premises opened for business. In recent weeks management of the premises had got worse and it was now time for the Committee to determine the matter.

[7] Constable Jolliffe of the Alcohol Harm Prevention Unit said that the Police also opposed the renewal of the licence. He would produce evidence of breaches of

conditions and of matters which have or may lead to proceedings in the District Court.

[8] Ms Williams, representative of the Medical Officer of Health said that she was there to assist. She had originally reported in opposition but had later withdrawn because she believed the applicant was addressing the various concerns with the assistance of the Inspector and the Police. She now believes this was not the case and supports the other two Agencies in their opposition.

EVIDENCE OF THE APPLICANT

[9] Ms Dixon said that she had acquired the lease of the premises so as to provide a venue for a wide range of artistic performances. She had identified that there was a need for a place where new or emerging performers could put on a show in a supportive environment at minimal cost. She believed she had been very successful in this. She now acknowledged that she was less skilled when it came to the management of licensed premises. A number of issues had been raised by the Inspector and matters came to a head in the aftermath of the death of her father when she was not coping. This also coincided with a period of ill health as a result of a thyroid problem.

[10] She believed that she was being judged by her physical appearance and by petty gossip in the local community. She denied that her weight loss was anything to do with drug taking. Rather it was the result of her medical condition and the stress she was under. On one occasion she had been red eyed as a result of contact lens issues and this had created an erroneous impression. She agreed she could have communicated more effectively with the Inspector. Now that she understood what the concerns were and had regained control of her affairs with improved health she believed she could meet all requirements. She was aware that her lease would not be renewed when it expired in February next year. She wanted to trade until then so she could make some money to counter losses made earlier. She also wanted to finish on a high note having provided the arts venue she had aspired to. Ms Dixon produced a letter of support from Ben Brown an established poet and children's author who valued opportunities to perform at the British Basement (Exhibit RD1). Also produced was a medical certificate confirming she had been suffering from a thyroid problem (Exhibit RD2).

CROSS EXAMINATION

[11] Ms Ramsay asked about the time it had taken to get the furniture on the footpath removed and to prevent people taking alcohol outside. Despite the Police issuing an infringement notice nothing seemed to happen. Ms Dixon responded that she had not really taken in that no furniture meant exactly that. She thought a slim line bench to serve the needs of smokers and people waiting for taxis would not be a breach. She now had a clear understanding of what was required. Ms Ramsay wanted to know if Ms Dixon could produce evidence of the systems she claimed to have put in place to address various issues. Ms Dixon said she had documents but they were at home. Ms Ramsay queried various details of the training records produced. Ms Dixon maintained that with a few omissions these were an accurate record of training undertaken regularly. She confirmed that she took the training sessions personally and believed she was qualified to do so.

[12] Ms Ramsay put to Ms Dixon that she had not met the requirement of having a Duty Manager present at all times when the premises were open for business. She had also failed to appoint Duty Managers properly and notify them to the District Licensing Committee and the Police. Ms Dixon disputed a number of the occasions cited but acknowledged there had been gaps. She also admitted failing to attend to the administrative requirements relating to Duty Managers. With respect to food being available Ms Dixon acknowledged that there had been problems. She said that there was always something available but the food stated in her application was often not available. This was partly because of supply problems but also because she could not afford the more expensive items at the time. Pies from the supermarket had for instance been provided instead of the gourmet pies advertised. The staple food item was often frankfurters and bread.

[13] In response to questions about the premises being open after hours Ms Dixon responded that it was after closing time that she did her work on the premises, cleaning, paperwork and the like. She would often have music on while she worked. She said this was an active time of the night for her as her hours for sleep were different to those of other people. She did accept that from time to time she had the company of a friend or her partner and she may have had a couple of drinks.

[14] In answer to a question from Ms Ramsay, Ms Dixon admitted that she was struggling financially. Initially the business had been profitable but she had lost a

number of customers over recent times. The extensive "Happy Hours" were an attempt to attract customers back. Ms Ramsay sought leave to show a short video which she would put in evidence later. We asked Ms Ramsay to produce the video when she gave her evidence. Ms Ramsay had described the video in her written evidence and cross-examined Ms Dixon on that basis. The video which was taken only a few days ago by security camera appeared to show people possibly selling drugs but clearly taking them. When asked about this Ms Dixon said that the footage showed the first floor foyer where there was a door to the street. She said when she became aware of such incidents she dealt with them. She could not confirm the people appearing in the video were bar patrons. The foyer is in the licensed area but it is not her leased area. There were other businesses with access to the foyer and the toilets beyond. Ms Dixon however acknowledged that these businesses were not open at that time of night.

[15] Constable Jolliffe started his cross examination by asking about smoking on the premises. He believed Ms Dixon allowed it and smoked herself. She responded that this would be when the bar had closed and she thought that was in order. The Constable asked whether Ms Dixon had been drinking prior to the incident which took place at the Lyttelton markets early on the morning of 27th January 2018. She agreed that she had a few glasses of wine but much earlier in the night. She confirmed that she had received a verbal warning for disorderly behaviour. Constable Jolliffe then questioned Ms Dixon about the occasion in June 2018 when she had loaned her car to a person who had subsequently used it to transport items stolen from a neighbouring property. Ms Dixon said she was only trying to help a friend of a friend and had no idea what he intended to use the vehicle for. In fact when it was not returned as promised she had reported it missing to the police. She had incurred financial costs as a result of the matter and had sought recompense from the borrower. When he offered her part payment in "fries" she said she had no idea he was referring to methamphetamine. She understood that the borrower of the car was facing charges of burglary but she was not being charged with anything.

[16] On 4th September 2018 a police search found extensive evidence of drug taking in the kitchen area. Ms Dixon denied any knowledge of this activity saying that it had occurred when she was ill. When later questioned further Ms Dixon said she was a very liberal person and was only trying to help people out. She said that she had not taken notice of what was going on. When asked on how many occasions she had dealt with people taking drugs on the premises she said it had

been twice. When pressed further she agreed there had been sufficient occasions for her to raise the problem in staff training sessions. She said she had sacked casual staff on the spot for involvement in drug taking but refused to give names.

[17] Ms Williams asked questions about the provision of food. Ms Dixon admitted that there had been difficulties during the winter when she had been experiencing financial problems. She had now taken on a person to look after the food side and see to alcohol stocks. This means that she will no longer have to leave the premises to buy items required at the time. She agreed that the premises had no kitchen as such only a place to reheat items. Ms Dixon said that she kept an incident book and in response to Ms Williams confirmed that it recorded two occasions when people had been observed using drugs. Two people had been banned from the premises.

[18] Ms Robinson asked what other businesses occupied the building. Ms Dixon responded that there was a vegan food bar, a second hand shop and a mobile food stall. All had keys to the building. However these businesses were not always open and certainly not at night. Ms Dixon confirmed that her Manager's Certificate had been renewed in January and there had been no difficulties with that. She confirmed that she kept in touch with neighbours and with the managers of other Lyttelton bars.

[19] Mr Wilson enquired about the numbers of people present in the bar from time to time. Ms Dixon replied that about 10 to 15 would be normal on a week night or up to 50 if there was a gig on. When there were no live performances music was played. Live performers decided on their own charges for admission and organised collection. If not enough was received Ms Dixon sometimes had to contribute a top up. The business received no income from the entertainment relying solely on the sale of alcohol.

RE EXAMINATION

[20] In answer to questions from Mr Ward, Ms Dixon clarified that she had not opened the bar primarily to make money but rather as a venue for the performing arts. She loved the place and was proud of what had been achieved however she admitted she had been naïve in some of her dealings. She thought she had been taken advantage of but had now woken up. If she saw people using drugs now they would be out. She had no idea what the term “fries” meant and when offered some along with cash accepted because she wanted some recompense for her financial loss and inconvenience in the incident involving the borrowed car.

EVIDENCE OF GEMMA DWANE

[21] Ms Ramsay called Gemma Dwane, a Christchurch City Council training support employee, to give evidence. Ms Dwane had accompanied the District Licensing Inspector on visits to licensed premises in order to assess future training needs. She gave evidence of an occasion when she visited British Basement with Ms Ramsay. She reported that she had been standing outside the premises with another colleague when she saw Ms Dixon arrive in response to a call from the Inspector. She observed that Ms Dixon was bedraggled and seemed unsteady on her feet. Her first reaction was that she should not have been driving as she thought Ms Dixon was under the influence of alcohol or drugs. When Ms Dixon explained that her red rimmed eyes were due to a problem with contact lenses Ms Dwane thought she was just making up her responses as she went along.

[22] Ms Robinson asked for clarification as to whether Ms Dwane had any qualifications on which to base her observations or particular knowledge of the Sale and Supply of Alcohol Act. Ms Dwane agreed that she did not but had been asked to record what she had seen.

EVIDENCE OF DISTRICT LICENSING INSPECTOR

[23] Ms Ramsay tabled her report and sought leave for the various annexures to be admitted into evidence. Mr Ward did not oppose the request. Ms Ramsay began her evidence by referring to the video obtained from the landlord of the premises. The footage was taken by the landlord’s security camera positioned in the first floor foyer. The footage was made available to the Inspector on 29th

October. It had been disclosed to the applicant's counsel by way of a memory stick the day before the hearing and was viewed during an adjournment when the hearing commenced. The video was shown to the Committee and those present on a screen in the hearing room. The video showed a number of people standing in the first floor foyer of the premises. They appeared to be involved in the supply and use of drugs. One person could clearly be seen sniffing from rows of white powder on a table top. Other people were coming and going from a door which apparently leads to the street. Ms Ramsay said that this was recent evidence of the misuse of drugs on the premises. She had no confidence that the applicant was properly in control of the premises.

CROSS EXAMINATION

[24] In response to questions put by Mr Ward, Ms Ramsay denied that she judged Ms Dixon by her appearance. She admitted that she had presented well when giving her evidence. However, she based her assessment of Ms Dixon's ability to manage the bar properly on the many failings to date and her many conversations with her. She denied she had a fixed view, but she doubted Ms Dixon's ability to improve.

[25] Constable Jolliffe had no questions. Ms Williams for the Medical Officer of Health asked how long Ms Ramsay had been an Inspector to which the response was six years. She was asked whether in that time she had ever seen the kitchen area of a licensed premise in such a state as was shown in the photos taken by the Police. She agreed she had not nor had she experienced such a high number of breaches by a licensee in her second year of trading. She went on to express the view that Ms Dixon was struggling financially. This was concerning as it could lead to price cutting or further breaches of statutory requirements. Ms Ramsay said she had not been the Inspector involved in the renewal of Ms Dixon's Manager's Certificate but pointed out that it has been held by authorities that the requirements of a licensee are higher than those of a duty manager.

EVIDENCE OF SENIOR CONSTABLE GARY PRESCOTT

[26] Senior Constable Prescott produced a brief of evidence which we took as read. He confirmed that he had been called to an incident at the Lyttelton markets on 22nd January 2018. There had been an altercation between Ms Dixon and other stall holders at six or seven in the morning when they had been setting

up. When interviewed Ms Dixon denied she had been drinking but said she had just come from the British Basement where she had been working all night. He had subsequently issued Ms Dixon with a warning for disorderly behaviour.

[27] On 4th September 2018 he had occasion to visit British Basement and search the premises. He produced as an exhibit a folio of photographs he and another officer, Senior Constable Heijo Bouma, had taken at the time (Exhibit GP1). In his opinion the premises was a "dive" and certainly not what was expected of licensed premises or where food was prepared. He found a large quantity of drug taking residue, some in the open but some hidden. In his experience the quantity suggested that this was the result of drug use over a long period. It was not just created by a single occasion. He observed material that he linked to methamphetamine use. He was concerned for his own safety and that of others given the used needles that were lying about. There was also what he thought was a partly decomposed rat on a shelf. There were a number of empty and part filled bottles of alcohol in the kitchen area.

CROSS EXAMINATION

[28] Mr Ward questioned how long the paraphernalia had been there, and put to the Constable that a group of young people could have made that mess in a couple of days. The Senior Constable said "or a couple of weeks". Mr Ward also asked about the incident at the market and put to the Constable that Ms Dixon's behaviour could have been normal in the circumstances of her stress and workload and the Senior Constable had not seen Ms Dixon personally at the market.

[29] Ms Williams asked Senior Constable Prescott to compare these premises with other places he had searched. The Senior Constable responded that he was a member of the Police specialised search team and had searched a variety of premises such as hotels, homes and gang pads over the last ten years. The amount of drug paraphernalia found was consistent with drug use over a considerable period of time. The room in which the material was found was small and would accommodate five or six people at the most, yet he had found some 50 needles. This suggested use by a number of people on multiple occasions. In answer to questions from Mr Blackwell, the Senior Constable said he believed it was a large scale incident, involving a large number of people over a long period of time.

EVIDENCE OF SENIOR CONSTABLE HEIJO BOUMA

[30] Senior Constable Bouma produced a written brief of evidence which was taken as read. He confirmed that he had occasion to visit British Basement on 4th August 2018 after the building owner reported someone in the bar after hours. On entering the bar he saw drug paraphernalia in plain view on a table. He conducted a search and took some of the photographs which had been produced as Exhibit GP1. He took samples of material found and arranged for them to be tested by Customs staff. The result was confirmation that this was methamphetamine. The Customs Officer's report was produced as Exhibit HB1.

[31] The Senior Constable noted that the door to the premises was open. The kitchen area was a complete mess. It was difficult to gauge how long it had been like this but he doubted it was the result of overnight activity. He had difficulty arranging a chat with Ms Dixon about the matter as she was first unavailable then seeking legal advice. When he later gave her a summons she commented that she provided a safe place for the young people of Lyttelton.

CROSS EXAMINATION

[32] Mr Ward questioned whether it was possible that Ms Dixon did not know the kitchen had got so bad and that a group of people could have made this mess quite quickly. The Senior Constable replied not in his experience. He thought they had been there for quite some time. He had visited many hotels during his time with the Police and had not seen any in that state. The Senior Constable said that he had served for 31 years. In his view the drug taking had been going on for several weeks, perhaps months. He was of this view because of the number of used spoons, syringes etc. that were lying around.

[33] Senior Constable Bouma confirmed to Mr Blackwell that he had served a summons on Ms Dixon on Friday 19th October 2018 to appear in the District Court on a charge of allowing her premises to be used for the commission of an offence against the Misuse of Drugs Act 1975.

EVIDENCE OF CONSTABLE GENEVIEVE CRADDOCK

[34] Constable Craddock who is with the Alcohol Harm Prevention Unit gave evidence of several monitoring visits to British Basement. She confirmed the

failure to have properly appointed Duty Managers present, the lack of food and the general untidiness of the premises reported by others to the Committee.

CROSS EXAMINATION

[35] Ms Ramsay asked Constable Craddock how many licensed premises she might visit on a monitoring evening and how many did not have a Duty Manager present. Constable Craddock responded that she would visit about a dozen premises and all would have Duty Managers. In some four years in her present role she did not recall ever finding a premise without a Duty Manager. To Ms Williams Constable Craddock said she had never seen anyone consuming food at British Basement.

EVIDENCE OF CONSTABLE GRAEME JOLLIFFE

[36] Constable Jolliffe is also attached to the Alcohol Harm Prevention Unit. He produced a brief of evidence which was taken as read. He described visits to British Basement since he joined the Unit and became responsible for reporting on the renewal application. He reported on issues with people drinking on the footpath and lack of Duty Managers on the premises. He said when he had confronted Ms Dixon with drug use on the premises she had responded that she was a very liberal person. His impression was that she was surprised at the quantity of drug materials found but not that it was happening. When he asked her about the reference to "fries" in the phone transcript she replied that she thought it meant food.

CROSS EXAMINATION

[37] Mr Ward wanted to know whether Ms Dixon was willing to engage and discuss concerns when these were raised with her. Constable Jolliffe responded that she was always willing to discuss but not to listen. He confirmed that she had not been charged in connection with the incident involving the theft of the historic lamp posts from the neighbouring property. He also confirmed that Ms Dixon had always denied any knowledge of drugs on the premises.

[38] Ms Ramsay asked how many premises would be visited by Police during a monitoring evening and were they, in the main, taverns. Constable Jolliffe confirmed that it would be about a dozen premises and they would be mainly

taverns because they typically had more issues such as drinking outside, fighting etc. He had never visited a tavern with no Duty Manager present. Ms Williams wanted to know if these premises had food available. He answered invariably yes until about 11 pm. After that the range was a lot less but always something.

CLOSING SUBMISSIONS

[39] Ms Ramsay said the concept of the premises as a venue for the arts was good but the management was poor. This was the first renewal after what is termed “the probationary year” and she considered the landscape had changed from when she first reported positively on the application for a licence. The Object of the Act that “the harm caused by the excessive or inappropriate consumption of alcohol should be minimised” should be seen as referring to both actual and prospective harm. She noted that on 13 compliance visits there was no Duty Manager present in the bar on 7 of them. This is in the “probationary” year. In her view there is strong evidence that granting this application would not serve to minimise harm. Ms Ramsay pointed out that problems with drug taking were obviously an issue as Ms Dixon had included them in the topics covered in staff training. In her view Ms Dixon had not discharged the onus of proving her suitability to hold a licence. She had failed to comply with a number of requirements. Most recently on 20th September 2018 there was no Duty Manager on the premises when Constable Jolliffe visited. Given that systems and staff training were known issues she had expected that Ms Dixon would have brought evidence of what she claimed to be doing. She had not. There was only an incomplete record of staff training, no entries since September and a gap in the middle of the year. There was not even a system to ensure the premises are secure. On at least two occasions the bar had been left open. The evidence from the Police of drug use on the premises was compelling in her view. All this indicated that the applicant was not suitable to hold a licence. Ms Ramsay was concerned that the applicant would do whatever she could to make the most of the last few months of trading. This raised the real risk of harm. She urged the Committee to decline the application.

[40] Constable Jolliffe agreed that the concept of the bar was good but the running of it was a real concern. The Police asked the Committee to decline the application.

[41] Ms Williams noted that there was no evidence that the applicant had appropriate systems, staff and training to comply with the law. She said suitability had not been established and the Committee should decline the application with immediate effect.

[42] Mr Ward submitted that to her credit Ms Dixon acknowledges the Agencies' concerns and realises she has made significant mistakes. For a short time, she had created a unique and inspirational environment and if the Committee refused the renewal, places that foster thought and artistic creativity would be the loser. Ms Dixon has addressed the issues, she has appointed Duty Managers, improved the supply of food and implemented training programmes. She was horrified at the serious drug taking on the premises and did not know the situation had got to that level. She had been wrong in trusting in a group of young people and would never let it happen again. The risk of harm was not great for the short time left before the lease of the premises expired. He reminded the Committee that no evidence had been produced of actual alcohol related harm. Ms Dixon gave an undertaking that she would comply with all conditions and would undertake such training as required. She accepted that it would not be appropriate to extend her trading hours and she was prepared to accept reduced hours. He urged the Committee to grant the application.

[43] The hearing ended at this point with the Committee reserving its decision. In closing the Chairperson gave a reminder that there was to be no report of proceedings published.

DISCUSSION

[44] The Committee acknowledges at the outset that Ms Dixon had the best of intentions when setting up this business. We have been told that she is providing a much-needed venue for the performing arts. We have no reason to doubt that. However, our task is to assess her performance in running the bar and to satisfy ourselves that renewal of the licence would meet the Object of the Sale and Supply of Alcohol Act 2012 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.

[45] We have been presented with a great deal of documentation by the Inspector and the NZ Police and we record that we have examined it all carefully. At the hearing we heard evidence and viewed photographs and videos that were disturbing. The evidence raised concerns about:

- a. Compliance with the Object of the Act
- b. The applicant's suitability
- c. The trading hours
- d. The lack of systems, staff and staff training
- e. The lack of an updated Alcohol Management Plan.
- f. Failure to comply with many of the conditions of the licence in particular:
 - (i) Breaches of s231(1) (duty managers)
 - (ii) No food available (s53)
 - (iii) No duty manager on the premises
 - (iv) Sale and consumption of alcohol outside the licensed area
 - (v) No current Host Responsibility Policy.

We were also shown photographs of the premises particularly the kitchen area which depicted an apparently dirty and certainly very untidy area littered with drug taking residue. The video which was introduced late into evidence was even more graphic in its depiction of recent drug taking on the premises.

[46] The applicant's response was to acknowledge that numerous breaches of the Act had occurred which arose initially from lack of understanding of what was required and latterly by her ill health and the effects of grief following the death of her father. She denied knowledge of the significant amount of drug taking on the premises but admitted there had been occasions when she had to intervene to stop people using drugs. We note that Ms Dixon is to appear in the District Court to face a charge of allowing her premises to be used in connection with an offence under the Misuse of Drugs Act 1975. It will be for the District Court Judge to determine whether this charge has been proved. However, we are required to form a view of all of the evidence before us as it pertains to requirements under the Sale and Supply of Alcohol Act 2012.

[47] We confirm that in reaching our decision we have had regard to the matters listed in s105 of the Act namely s105 (1) (a) to (g), (j) and (k). The particularly relevant matters are (a) the object of the Act; (b) the suitability of the applicant; (j) whether the applicant has appropriate systems, staff, and training to comply with the law; and (k) any matters dealt with in any report from the Police; an

inspector, or a Medical Officer of Health made under s103. We have also considered s131(b) whether (in its opinion) 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 and s131(d) the manner in which the applicant has sold (or as the case may be sold and supplied), displayed, advertised, or promoted alcohol.

[48] Turning first to the matter of suitability which is pivotal to this application we note that there is ample case law deriving from the former Liquor Licensing Authority, The Alcohol Regulatory and Licensing Authority and the High Court to provide guidance as to what is required.

In *Page v Police HC Christchurch Ap84/98* Pankhurst J held 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 determined in a vacuum but in the context of the particular case..."

and in *Deejay Enterprises [Re Milward LLA PH531/97, PH532/97]* the Authority said-

"the "guiding hand" or "hands on operator" of any company, or that potential holder of a General Manager's Certificate, now receive greater scrutiny from both the police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently tug in different directions. The police cannot be everywhere. Little but a licensee's or a manager's character and suitability may stand between upholding the law and turning a blind eye. Self imposed standards in accordance with the law must be set by licensees and by holders of General Managers' Certificates who control and manage licensed premises."

The suitability issue was further described in the High Court in *re Sheard [1996] 1 NZLR 751* when Holland J commented-

"The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that are to go with the holding of a licence."

[49] As Pankhurst J said, "suitability is not determined in a vacuum but in the context of the particular case." We are not in a position to pass judgement on Ms Dixon's standing in the community at large and in the arts community in particular. For all we know she is held in high regard in both. However, we have heard and seen evidence of how woefully she has carried out her management responsibilities in respect of British Basement including the Police evidence of serious drug taking on the premises (which occurred over a lengthy period, involving a large number of people), to which Ms Dixon has either turned a blind eye or has taken action which was ineffectual in stopping it. Ms Dixon does not have the systems, appropriate staffing or the management skills to ensure the safety of her patrons. This raises very serious questions about her suitability to hold a licence. For those reasons we have no difficulty in reaching the view that she is unsuitable to hold a licence (or for that matter a Manager's Certificate) under the Sale & Supply of Alcohol Act 2012.

[50] With respect to s105(1)(j) whether the applicant has appropriate systems, staff and training in place we again have no doubt that this is not the case. We acknowledge some effort in these areas but clearly insufficient to prevent the numerous breaches of the licence conditions, the provisions of the Act and drug abuse.

[51] s105(1)(k) requires us to take account of any matters raised by the Agencies in reports produced pursuant to s103. We acknowledge again that we have read the reports and listened carefully to the evidence presented by the Inspector and the Police. The concerns of the Agencies are well documented and have been traversed earlier in this report. We take them on board.

[52] We are also required to consider the effect of renewing the licence on the amenity and good order of the locality (s131(b)). While we heard no direct evidence under this section it is not difficult to draw the conclusion that given the breaches of conditions and of the general law with respect to smoking, drugs and hygiene, the amenity and good order of the locality would be likely to be increased, by more than a minor extent should we refuse the renewal.

[53] We must also consider the manner in which the applicant has sold (or as the case may be, sold and supplied), displayed, advertised, or promoted alcohol. We note the Inspector's concerns about the extent of "Happy Hours" and the reductions in the price of drinks. There are also the inappropriate Facebook messages promoting alcohol use to which we have not referred earlier but which are annexed to the Inspector's report. This has not been a major issue for us but the concerns are included for the sake of completeness.

[54] We now turn to the Object of the Act. As Heath J. said in *Venus NZ- Ltd CIV 2014-419-420* [2015] NZHC 1377-

"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)(b)-(k) of the 2012 Act, that grant of an off-licence is consistent with the object of the Act?

[55] In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd* [2018] NZHC 1123 Clark J. summarised the applicable principles in respect of the renewal of a licence. We further summarise the following:

- (a) There is no presumption that an application will be granted.
- (b) The DLC, and the Authority, after having regard to the criteria in the Act, is then to step back and consider whether there is any evidence indicating that granting the application will be contrary to the object in s4 of the Act. The test is as articulated in *re Venus New Zealand Limited*.
- (c) The application of rules involving onus of proof may be inappropriate, and similarly, there is no onus on the reporting agencies to prove the application should not be granted.
- (d) The criteria for the issue of licences, and for renewal, are not to be interpreted in any narrow or exhaustive sense. The Authority (and DLC), may take into account anything which from the terms of the statute as a whole, appears to be regarded by the legislature as relevant to conditions and the terms on which they should be granted.

(e) The Authority is not required to be sure that particular conditions will reduce alcohol abuse. We are entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective...then we are entitled to test whether that possibility is a reality.

Further the evaluative function is an assessment of risk. Clark J. said at [43]

“The factors to be considered in the course of assessing an application for a licence, or for renewal, as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm.”

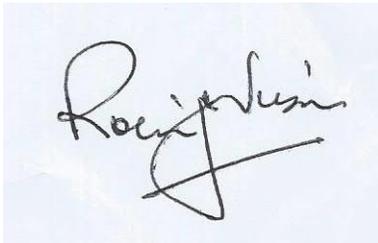
We respectfully adopt the same approach to this application for renewal of an on-licence. Taking a step back and considering the reports we have received, the many documents, photographs and video tabled and the oral evidence we have heard placed against the criteria in s105 as repeated in s131 and mindful of the Inspector’s point that the risk of harm must be considered as prospective as well as actual, we are satisfied that the granting of this renewal would not serve the dual arms of the Object of the Act. We acknowledge Counsel’s point that there has been no evidence of alcohol abuse as such but given everything we have heard, seen and read we do not have confidence that the sale, supply and consumption of alcohol can be undertaken safely and responsibly nor that the harm caused by excessive or inappropriate consumption of alcohol can be minimised.

[55] On the other hand the applicant has acknowledged her failures and says she is now in improved health and ready to ensure that all conditions are adhered to. She seeks an opportunity to trade for only a few more months. Unfortunately, we were presented with very recent evidence of failure to manage the premises adequately in the form of the video showing drug use on the premises. This was not recorded earlier in the year when Ms Dixon had health problems and was struggling with grief issues but only a few days before this hearing. We can place little reliance on Ms Dixon’s assurances that she will do better in the future. We are mindful that it is said that the best indicator of a person’s likelihood to perform in the future is how they have performed in the past.

DECISION

[56] After considering all the matters to which we are required to have regard as set out in s105 and s131 the decision of the Committee is that the application of British Basement Ltd for renewal of an On-Licence for premises at 10 Oxford Street, Lyttelton is refused. The licence for these premises having already expired and kept alive only by virtue of the renewal application the Committee pursuant to s135(2) of the Act sets Friday 16th November at 8 pm as the final date and time for the expiry of the licence subject to any right of appeal being exercised.

DATED at Christchurch this 12th day of November 2018.

A handwritten signature in black ink on a light blue background. The signature is written in a cursive style and appears to read 'R.J. Wilson'.

R.J.Wilson
Chairperson
Christchurch District Licensing Committee