

Decision Number: 60E [2021] 8701

IN THE MATTER OF

the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF

an application by JUNEJA GROUPS LIMITED
for renewal of On-Licence pursuant to s 127
of the Act in respect of premises situated at
817 Colombo Street, Christchurch known as
'Gold Aroma'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 1 October 2021 (at Christchurch)

Committee

Chairperson: Mr D L Blackwell, QSM

Members: Mrs M Redstone, JP
Mr G Clapp, JP

Appearances: Ms S Devi, Director of the Applicant
Mr T Juneja, Witness for the Applicant
Mr P Spang, Licensing Inspector, in opposition
Mr J Alps, Witness for the Licensing Inspector
Sergeant D Robertson, New Zealand Police, in opposition
Mr R & Mrs K Hack, Objectors
Mr V Omeri, Objector

Decision: 1 November 2021

RESERVED DECISION OF THE COMMITTEE

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Introduction

[1] The Committee has before it an application by Juneja Groups Limited ('the applicant') to renew an On-Licence for premises situated at 817 Colombo Street, Christchurch ('the premises'), known as 'Gold Aroma'.

[2] The application was received on 12 April 2021 and publically notified on the Christchurch City Council's website on 13 April 2021. An administrative error in the public notice was corrected on 22 April. The application remained on the website for a minimum period of 15 days from 22 April 2021.

[3] A total of 7 public objections, from 6 individuals, were received and the application was also opposed by the Licensing Inspector,¹ The New Zealand Police² and the Medical Officer of Health.³

[4] Objectors, Mr & Mrs Hack and Mr Omeri, attended the hearing. Mr Omeri left the hearing at the first break without delivering his brief of evidence which had previously been circulated. Objectors, Mr & Mrs Connell and Mr & Mrs Hubbard, were unable to attend but supplied a signed affidavit of their brief of evidence. Objector, Mr Clark, advised prior to the hearing he was now not able to attend. Mr Fairburn did not attend the hearing or file a brief of evidence.

[5] While Objectors, Mr & Mrs Hack, did raise some issues around rubbish and behaviour near the premises the general nature of the issues raised by all the parties centred on the spill of noise from the premises.

[6] Due to issues with Covid-19 a previous proposed date for the hearing was postponed and rescheduled for October 1st 2021.

[7] Prior to the hearing Mrs Barbour, the representative of the Medical Officer of Health, advised that due to Covid distractions she would not be attending the hearing. The Committee understands she was not intending to give any evidence.

[8] The applicant was represented by its sole director and shareholder Ms Swastika Devi with Mr Tarun Juneja, her partner, as the sole witness.

Summary of result

[9] For the reasons stated below the application to renew the On-Licence is granted for a truncated renewal period of one year, subject to reduced licensed hours and other conditions as set out at the end of this decision. This decision to take effect from 2.00 pm on the 15th November 2021.

¹ Report dated 13 July 2021.

² Report dated 8 June 2021.

³ Report dated 6 July 2021.

Preliminary matters

Objector status

[10] Prior to the hearing, via a minute,⁴ the six objectors were provisionally found to have status to object as having a greater interest in the application than the public generally in terms of section 102 (1) of the Sale and Supply of Alcohol Act 2012 ('the Act'), based on their indicated close proximity of residence to the premises, and this finding of status is confirmed as no contest to status was advised.

Withdrawal of application for variation

[11] Prior to the hearing the applicant withdrew their request to extend their licensed hours and agreed with the Licensing Inspector to designate part of the premises (the rear courtyard) as supervised at all times. The District Licensing Committee (DLC) accepts that no members of the public were disadvantaged in any way and grants a waiver under section 208 of the Act.

The hearing

The applicant and application

Opening Submissions & Evidence of Ms Swastika Devi and Mr Tarun Juneja

[12] Mr Juneja read his brief of evidence and covered a number of issues that were raised in opposition to the renewal. He outlined a gang incident which he stressed happened outside the bar in April 2021 and said that following the incident they took immediate action and permanently banned them from the bar.

[13] Mr Juneja also detailed their applications for special licences that were declined by the DLC.

[14] Mr Juneja said they were now employing Harvey Security Solutions as their security operators. He said there were noise complaints but they took relevant steps to control the noise. They had asked the Licensing Inspector, following a recent meeting, to instruct them on how to use their decibel machine. He also said they were working to get the front door double glazed and they were changing the entrance from the front door to the back door on event nights. They would monitor the front door so that patrons cannot open it unless in the case of emergency.

⁴ DLC Minute dated 28 July 2021.

[15] Mr Juneja said he had met Mr Hack, an objector, once and disputed that he did not show any interest with regards to the noise complaints. He also said there was no discussion of broken bottles, etc.

[16] Mr Juneja said they never had intoxicated patrons inside their bar suggesting the people Mr Hack has seen and videoed were from other bars. He said he always cleans up around the bar after it closes.

Committee's questions for Ms Devi & Mr Juneja

[17] Asked what hours the security staff work and the cost of those people, Mr Juneja said they worked 10.00 pm to 3.30 am on event nights and the cost was \$35 per guard per hour. He was also asked if he went outside to check for noise and stated he did about every hour and recorded it in the diary. He also said he cleaned up outside the premises each night including rubbish that he was sure was not from his premises.

[18] Asked his position in the company Mr Juneja said he was the husband of Ms Devi. He had previously applied for a manager's certificate but this was opposed by the Police due to a matter with the courts. He could reapply after two years. He said he was not paid but just goes to work there. He said he was the husband of Ms Devi and treated the business just like his own.

[19] When asked how often Ms Devi works at night he said never. They have an 18 month old daughter that she looks after. Mr Juneja said they have two managers plus Ms Devi. Sunny Kumar and Sadha Dayl.

[20] Answering a question, Mr Juneja said they have three chefs who finish around 8.00 to 8.30 pm and after that fried food is available until 3.00am.

[21] Asked about the proposed new late night access through the rear access lane, Mr Juneja said they would only use this access on event nights (Friday and Saturday nights). They would put a security person at the back door on those nights and signs at the front door plus a person to monitor it. Rubbish bins were removed on event nights to allow better rear access.

[22] Asked about how many parts of the noise management plan were in place Ms Devi said White Audio have repositioned the speakers to inside facing rather than facing outside. Duty managers monitor noise inside and outside every hour.

[23] Asked if they had engaged a sound engineer Ms Devi said White Audio. Asked about the soundproofing of the building she said there is sound proofing in the ceiling. It was then put to them that with the number of sound complaints the sound proofing was obviously not working. Mr Juneja said they had a plan and then Covid happened. They had planned to engage a sound engineer later.

[24] Asked about the suggestions by the Inspector and the objectors that the Committee might consider renewing the licence for just one year and reducing the hours on Friday and Saturday, Mr Juneja said they were their profitable nights. He said they were currently not profitable due to Covid.

[25] Mr Juneja said that when they started the security staff were provided by the DJ but when they found out they were not licensed they changed to Harvey Security. He also said the only sound system used was their in-house system.

[26] Asked if they disputed that their noise escape is over the allowed limit Mr Juneja agreed it sometimes was. Ms Devi said they are doing things as per the Council requirements but suggested they may have different meters. Mr Juneja said they take their meter across the road to check sound levels.

[27] Ms Devi said she works the day shift until about 2.30 pm while Mr Juneja works on Friday and Saturday evening from about 8.00 pm until closing time.

[28] After a question from the Committee, Ms Devi said it was their policy that alcohol could not be taken off the premises.

[29] Questions were asked regarding their purchase of the business and where the money came from. Mr Juneja said their savings and a loan from Heartland Bank. The loan was to the company with a personal guarantee.

Licensing Inspector's cross-examination of the applicant

[30] Mr Spang put it to them that the sound complaints have occurred while Mr Juneja was working. Mr Juneja agreed. Mr Juneja said they had an infringement notice which they will pay.

[31] Asked if they saw the monitoring of the sound as an obligation, Ms Devi said yes.

[32] Asked about a recent meeting with Mr Alps and Mr Spang regarding their obligations for their patrons leaving their venue, Ms Devi said they are not intoxicated.

[33] Asked about how far either side of the venue they clean up after closing each night, Mr Juneja said a couple of buildings or about 20 metres. Asked if the mess was from their patrons Mr Juneja said there are often events on at the Town Hall.

[34] Asked if they had met with the neighbours, Mr Juneja said no but in July last year he had a conversation with Mr Hack regarding noise and after that he asked the DJ to keep the noise down.

[35] Mr Spang asked Mr Juneja to explain the fight that took place outside the premises. Mr Juneja said he understood they were from his premises but he does not know why they were fighting. They closed the bar immediately and called the Police.

[36] Mr Spang asked about his request for information about the security personnel and their names and address. Mr Juneja and Ms Devi said they thought they had sent it. Mr Spang said he had never received it.

[37] Mr Spang asked if people arrive having consumed alcohol somewhere else or in their cars. Mr Juneja said perhaps sometimes but they ensure they do not become intoxicated. When asked if they knew Gold Aroma was in a liquor-ban area they seemed unsure.

[38] Mr Juneja was then asked about several meetings he had with the Inspector and Mr Alps. Mr Spang said the main recommendations were to engage an acoustics engineer and produce a comprehensive noise management plan. Asked what action they took Ms Devi said they had White Audio change the speakers. Asked what action they took when Mr Alps issued them with a written warning, Ms Devi said they took the action of closing the entry door and then Covid-19 happened. Ms Devi said an acoustic engineer is expensive.

[39] Mr Spang then asked if Ms Devi agreed excessive noise continues to escape and she agreed. She said it will still escape with the door opening and closing. Mr Spang then asked if they were aware that there is a lot of glass at the front of the building and while he was not an expert in this area Mr Alps had made and reported excessive noise readings even with the door closed. Ms Devi said it was her understanding that the high noise levels were with the door open.

[40] Mr Spang then asked for the applicant's thoughts on the suggested conditions he had written in his report. Mr Juneja said smokers in the front courtyard would be out there supervised.

[41] Mr Spang asked if they understood their first year of operation was a probationary period and that they had reasonable opportunity to correct the sound problems. Mr Spang then put it to the applicants that their actions might be seen as too little too late. Mr Juneja agreed and said they were doing what they could.

[42] The Committee then queried an earlier comment from Mr Juneja that customers were not allowed to take alcohol outside onto the street. They pointed to the photographs produced by the objectors Mr & Mrs Hack. Mr Juneja said they do not sell the cans and brands in the photographs.

[43] The Committee then asked if they can really afford (financially) to be in business. Ms Devi said yes but they just needed time. They would engage a sound engineer.

Police cross-examination of the applicant

[44] Sgt. Robertson asked Mr Juneja if he approved of him mentioning a previous conviction. Mr Juneja agreed. Sgt. Roberson then explained an assault conviction in 2019 and noted that using the Osbourne decision he had almost completed two years since the conviction. He asked Mr Juneja if the conviction had not occurred would he be the primary operator of the business. He said yes and that he currently works full time as a courier driver. He said he had experience in a bottle store from 2014 to 2016 at Super Liquor New Brighton.

[45] Mr Juneja said he would possibly work fulltime at Gold Aroma once he had a manager's certificate but he was a little unsure as he and his brother had another project planned around a grocery store.

[46] Sgt. Robertson then asked if he would be applying for a manager's certificate once the two years were up. He answered yes.

[47] Sgt. Robertson then sought clarification on the number of managers they currently have and the answer was three, Ms Devi and two employees.

[48] In further questioning from Sgt. Robertson, Ms Devi confirmed they had read the evidence of Mr Alps. Sgt. Roberson asked would the issues highlighted be a problem for them moving forward. Mr Juneja said no and Ms Devi said they would engage an acoustic engineer.

[49] In questions around security services, Mr Juneja said initially the DJ organised the security. Once they realised they were not registered they changed their provider. Asked about their policy around gangs, Mr Juneja said they were all banned.

[50] The Chair was advised that Mr Omeri needed to leave the hearing and will not be giving evidence.

Mr & Mrs Hack's cross-examination of the applicant

[51] Mr Hack advised he had no questions for the applicants.

The attitude of reporting agencies

[52] The three agencies opposed the renewal of the application. The Licensing Inspector in his report opposing the application for renewal had noted that, depending on evidence produced at the hearing, he may be agreeable to a 12 month renewal with conditions, which are discussed further below.

The Licensing Inspector's case

The Licensing Inspector's evidence

[53] Mr Spang said he had prior to the hearing filed submissions and he was intending to summarise his report.

[54] To begin, Mr Spang noted that:

- The renewal application was initially filed also seeking a variation to extend the licensed hours but these proposed extended hours were later withdrawn after the applicant met with the agencies.
- The applicant agreed that part of the premises, the rear courtyard, would become supervised at all times.

- A total of 7 objections were received from 6 different objectors and they all live within about 135 metres from the premises.
- The Police and the Medical Officer of Health also oppose the application.

[55] Mr Spang said as the Licensing Inspector he also opposes the granting of a new licence for a three year period, drawing attention to such points encapsulated below

[56] The premises have been subject to a large number of noise complaints.

[57] The principle operation of the business is listed on the application form as a café, restaurant and bar. The current hours permitted are Sunday to Thursday 8.00 am until 11.00 pm. Friday 8.00 am until 3.00 am the next day and Saturday 9.00 am until 3.00 am the next day.

[58] Swastika Devi is the sole director and shareholder and has held a manager's certificate since May 2020. Ms Devi is currently taking care of a young child therefore is only working Monday to Friday day shifts.

[59] Mr Spang then quoted his assessment against the two limbs of the Object of the Act:

- Will the sale, supply and consumption of Alcohol be undertaken safely and responsibly on these premises. His answer was no – he did not believe that the sale of alcohol is being undertaken responsibly, or will be undertaken responsibly, due to ongoing concerns with excessive noise created by the applicant.
- Do we have confidence that the steps proposed will minimise, as far as possible, harm caused by the excessive or inappropriate consumption of alcohol. No. Harm (negative public health outcomes) includes noise complaints. Mr Spang does not believe that the applicant has been doing what is reasonably expected to reduce harm caused to the good order and amenity of the locality by excessive noise.

[60] Mr Spang said under section 105(1)(b) the ongoing noise complaints and noise directions question the applicant's suitability. Under section 105(1)(d) the applicant has been unable to operate without noise complaints under the current trading hours so there are grounds for trading hours to be reduced, particularly the outside area.

[61] Under section 105(1)(e) Mr Spang said there were concerns about considerable noise escaping from the premises when the main door is open. This is aggravated by the dance floor being located near the front of the premises. He said he had also witnessed considerable noise being created by patrons in the outside area at the front of the premises. He thought a double door main entrance and the addition of a comprehensive noise management plan that is strictly complied with would mitigate this concern.

[62] Under section 105(1)(h) Mr Spang said the good order and amenity of the locality has been reduced by more than a minor amount by excessive noise escaping from the premises. He also noted an objector also alleged that patrons from Gold Aroma urinated and vomited on their building and in a nearby carpark.

[63] Under section 105(1)(i)(ii) Mr Spang said to his knowledge Gold Aroma is the only licensed premises in the immediate area receiving noise complaints and noise directions. This was having a negative effect on the good order and amenity of the locality. If the licence is not renewed he would expect the good order and amenity of the area to improve.

[64] Under section 105(1)(i) Mr Spang said the renewal application did not provide adequate evidence of appropriate systems and training. An amended Alcohol Management Plan and Noise Management Plan received by him on 12 May 2021 was an improvement and included the applicant preventing entry to the premises by gang members.

[65] Mr Spang then talked about his visits to the premises and he played a recording he made of the noise in the area.⁵ He said in addition to the loud music he could hear patrons yelling and talking loudly from the outdoor area. During the May 2021 visit he discovered the security persons were not licenced as required. He did note that he did not locate any patrons who were showing signs of intoxication. On another visit during June 2021 he could hear loud music from his car and noticed the volume would increase considerably for short periods and presumed this increase happened as the main front door was opened and shut.

[66] During this June visit he noticed bottles and cans outside Gold Aroma and also vomit beside a planter box. He said about 25 patrons were present during that visit at 12.40 am on a Sunday morning. Again during this visit he did not see any persons showing signs of intoxication.

⁵ Attachment 2 to Inspector's Report.

[67] Mr Spang said the applicant's started trading in late February 2020 and when his report was written in July 2021 there had been 22 noise complaints of which 9 deemed excessive and Excessive Noise Directions were issued. The number of complaints have increased since his report was written.

[68] Mr Spang then noted that all the noise complaints have been lodged between the hours of 10.47 pm and 2.55 am.

[69] Mr Spang then detailed his meeting with Mr Alps and Ms Devi on 13 August 2020 which resulted in a written warning. A copy of the written warning was attached to the Inspector's report. He detailed another meeting on 5 November 2020 where Ms Devi agreed to get appropriate acoustic advice from a suitably qualified consultant. This resulted in correspondence on 23 November 2020 from Jamie Thomson of White Audio.

[70] Mr Spang detailed noise monitoring undertaken by Mr Alps where he recorded noise levels in excess of the standards. A copy was attached to Mr Spang's report and this report was detailed further by Mr Alps in his evidence.

[71] Mr Spang advised that the applicant passed a controlled purchase operation on 15 May 2021. Gold Aroma received a letter congratulating them on passing the test by refusing to serve minors.

[72] Mr Spang noted there were six other licensed premises in the vicinity. Four restaurants with trading hours between 11.00 am and 1.00 am the following day. The Town Hall with trading hours of 8.00 am to 2.00 am the following day and a one off-licence bottle store specialising in whisky with an on-licence for tastings.

[73] Mr Spang reminded the Committee of two relevant cases:

- *Paihia Saltwater (2001) Limited*, where the Authority said:
*Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes the view that if no attempt is made to prevent the escape of, or reduce noise, then it is the Authority's duty to monitor the hours of opening, if not the existence of the licence.*⁶
- *Amber Indian Restaurant Limited*, where the Authority said:

⁶ *Saltwater Cafe and Bar, re* [2001] NZLLA 391 (4 September 2001) at [28].

Of course, these comments need to be taken in the context of the particular environment in which the premises are situated. The Paihia decision related to premises in Paihia which is a small tourist resort town in the Bay of Islands. In this case, the premises are located in the centre of a busy entertainment area in the central part of Auckland City. The Quays Apartment Building is also located in that area. Accordingly, persons who choose to reside in apartments in this sort of area must expect the sort of noise that the environment generates. It is not unreasonable to expect people living in such an environment to have appropriate noise barriers built into their premises: for example, double glazing and air conditioning.

[...]

That does not mean that premises in the central business district of Auckland are immune from taking appropriate steps to make sure that noise emanating from their premises does not disturb residents. It is a matter of balance.⁷

Licensing Inspector's Recommendation

[74] Mr Spang stated in his report that for the reasons outlined he opposed the application and recommended it be heard by the District Licensing Committee at a public hearing.

[75] Mr Spang said that depending on evidence produced at the hearing, he may be agreeable to a renewal for a 12 month period subject to several conditions:

- The hours of use for the front outdoor area are reduced to a maximum of 11.00 pm.
- The Alcohol Management Plan becomes a condition of the licence.
- The installation of a double door entry system for the main entrance is seriously considered to help contain noise inside the premises.
- An acoustic consultant is engaged to prepare a comprehensive Noise Management Plan that would clearly set out how noise from the operation of the bar will be controlled and managed to ensure it is fully compliant with the noise criteria.
- The new comprehensive noise plan becomes a condition of the licence

⁷ *Raviz Lounge Bar and Grill* [2013] NZARLA 887 (11 September 2013) at [28] and [30].

Committee's questions for the Licensing Inspector

[76] Asked if he considered the applicants have the experience to operate the business, Mr Spang said that was a difficult question to answer but he believes it is possible to comply with the requirements.

[77] Mr Spang believes the operation has a good food focus and the applicant will have learnt a lot from the process but they should have done more sooner. They need to engage an acoustic consultant to prepare a comprehensive noise management plan. He said the engaging of the acoustic engineer and the changes they need to make would be expensive and he was unsure if the applicant had the finance to complete the new plan's recommendations.

[78] Asked if the addition of double doors would be sufficient Mr Spang thought it would probably not be enough but Mr Alps would be able to answer that question better than him.

[79] Mr Spang was asked a number of questions relating to the use of the back alleyway and the placing of the rubbish bins on the footpath when that entrance was being used. Mr Spang explained that he thought it would be acceptable as the rear door along with the front door is required to be unlocked at all times the bar is in operation to meet safety issues. He said from a noise control perspective using the rear lane was a good option.

[80] Mr Spang also said the applicant would need to display a copy of the licences at the backdoor as well as the front. He thought the maximum number of people permitted was 100 although at the times he visited there were only 20 – 25 patrons present.

[81] From further questioning Mr Spang said he was happy that food was always available and he noted most operations go down to a snack menu in the later hours.

[82] Asked if he thought installing the double front doors would solve the problem Mr Spang said that he does not think so as there is a large amount of glass which would allow noise escape.

[83] Mr Spang said that his proposal not to use the outdoor area after 11.00 pm would create issues for smokers as there would be nowhere for them.

[84] Asked if the current Noise Management Plan is up to speed Mr Spang said he thought it should be enough but a qualified sound engineer should be able to improve on that. He said it is likely a sound engineer would be able to have the sound levels adjusted so that no one could alter them. He said the applicant had made some progress to reduce noise, particularly the bass which he believes is now reduced.

Cross-examination of the Licensing Inspector

[85] Mr Hack asked about the practicality of the doors and noted that there were 2 ranch sliders and one normal door. He asked if they would need a staff member to monitor the doors. Mr Spang agreed they would between 11.00 pm and 3.00 am. Mr Spang said he would be most concerned if they were locked.

The Licensing Inspector's witness, Mr Alps

[86] Mr Alps introduced himself and said he is employed by the Christchurch City Council as an Environmental Officer in the Environmental Health Team of the Regulatory Compliance Unit. He has worked for the Council for 40 years.

[87] Mr Alps explained that a contractor is used to initially investigate noise complaints and his role is to check those reports. During the period concerned there were 28 noise complaints made, with 12 being deemed as excessive. 11 directions were served on the duty manager and 2 infringement notices were issued.

[88] Mr Alps said he had carried out a full assessment on 13 June 2021. Details of that operation are set out in Attachment 3 of his brief of evidence.

[89] Mr Alps said that the operation of the bar was not complying. When the door opened the noise levels rose considerably. He noted that even with the door closed the bar was still not complying.

[90] Mr Alps made a number of recommendations set out in attachment 3. These included not using the outdoor area after 11.00 pm, the outside speakers being turned off, an acoustic consultant being engaged and a comprehensive Noise Management Plan produced.

[91] In answering a question from Mr Spang, Mr Alps said the applicants had not carried out his recommendations and he believed they had not done very much as far as he was aware. He understood no acoustic consultant had been engaged.

[92] When asked if the applicants were assessing their noise levels correctly he stated very clearly they were not. They did not understand noise levels and their meter was very basic and could not give a LAeq level.

[93] Mr Alps said the previous operators of the business were there for at least three years and during that time 6 noise complaints were received but no noise level directions were given.

Committee's questions for Mr Alps

[94] Asked if the double glazing of the doors would solve the problem, Mr Alps said the front of the building would need to be acoustic double glazed including the doors and all the glass at the front of the building. He noted this meant acoustically double glazing and not just double glazing. He said the noise is coming out of the front of the building as opposed to coming out of the roof of the building.

[95] Asked to put this operation into perspective with others he has dealt with over the years he said Gold Aroma was a concern due to the large number of complaints and the number that were justified. It was also a concern that when a notice was served on the bar they did not comply and a second notice was needed and this does not usually happen.

[96] Asked if by using the back for entry and exit would just transfer the noise problem to that side of the building, Mr Alps said with the DJ at the front of the building the structure between there and the back would assist in controlling sound.

Cross-examination of Mr Alps

[97] None of the parties took opportunity to cross-examine Mr Alps on his evidence.

The Police case

Sgt Robertson's evidence

[98] Sgt. Robertson talked about three different special licence applications lodged by the applicant for sacrosanct days. The Police viewed these applications as one simply seeking an extension of trade to an otherwise prohibited date – and as such opposed the applications. The District Licencing Committee subsequently declined the applications.

[99] Sgt. Robertson met with the applicants and told them the Police viewed the applications as reflecting the inexperience of the applicant and of efforts to generate revenue from additional trade.

[100] In May 2021 the three agencies met with Ms Devi, Mr Juneja and their primary duty manager, Pulkit Sharma, where the issues of the operation of the premises were discussed at length. This included the ongoing noise issues.

[101] Sgt. Roberston said there were not a lot of calls for service to the Police for incidences in or near the bar. An assault had happened in April 2021 where a person was assaulted and seriously injured leaving the premises but this in no way could be attributed to the applicant.

[102] Sgt. Roberson said the supply of requested information had been very slow but this had now been supplied.

Cross-examination of Sgt Robertson

[103] None of the parties had questions for Sgt. Robertson.

Committee's questions for Sgt Robertson

[104] Asked about his comment about potential financial pressure, Sgt. Robertson said there were signs that things were tight. They indicated they were working to build the business and, as many similar businesses, Covid had created many issues. The applications for the special licenses and the lack of action engaging an acoustic engineer add to the concern. The Police consider that if those sort of pressures exist there is a risk the rules may not be followed. Sgt Roberson said there is no evidence in this area but it is just a risk factor.

[105] Asked if he thought the applicant understood the reasons for a special licence, Sgt Robertson said he felt some of the issues were lack of experience and perhaps lack of understanding of the system.

[106] Sgt. Roberson was asked to elaborate on an earlier comment he made that there appeared to be some positive change over the last three months. He said the Police had had no issues although the Police concentrated on crime and disorder.

The objections

[107] The Chair clarified the relevance of the objectors who did not give evidence at the hearing. He noted that all objections would be read and considered by the Committee but the weight given to those objections was not likely to be the same as Mr & Mrs Hack who gave evidence under oath. The

affidavits supplied would potentially carry more weight than the others who did not appear. He said that he noted there did not appear to be anything novel in all those objections that were not covered in the evidence of Mr & Mrs Hack.

Mr Richard & Mrs Kathryn Hack

[108] Mr Hack said they chose to live where they do because they enjoy the hub of the city, with the Town Hall and restaurants nearby. They had built a building with their business on the ground floor and their three level apartment above. He said they considered noise issues before building but were aware of the noise reduction requirements at 11.00 pm. He said if everyone follows the rules it works well.

[109] Mr Hack said they took action to minimise noise when they built with the walls being 244 millimetres thick and the glass being acoustic double glazing.

[110] Mr Hack said the other restaurants in the area do not have complaints.

[111] Mr Hack said it was no coincidence that people walking from town would only urinate and vomit in this tiny area near Gold Aroma. He said the comments from the applicant about the cleaning up they do fall flat. On a Sunday morning they can see half empty glasses and other rubbish on tables near the front of the premises and he stated that if they cannot clean up the inside they are unlikely to clean up the outside.

[112] Mr Hack had supplied a number of photographs taken on a Saturday morning within two or three metres of Gold Aroma. The next morning, Sunday, the bottles, cans and other rubbish was still there and had been added to.

[113] Mr Hack noted that they do not always make a noise complaint as by the time they ring noise control it probably takes two hours to get back to sleep. It is often easier to use ear plugs and try and go back to sleep.

[114] Mr Hack said the nights Gold Aroma is closed for one reason or another problems just do not exist.

[115] Mr Hack played a short video showing women fighting in the middle of the street and people making a lot of noise.⁸ This video was taken at 3.15 am in the morning. He noted the night this video was taken was the 14 August 2021 which was the first night the rear door was used for access and there did not appear to be a music noise issue.

[116] Mr Hack did note that it appears Gold Aroma have more and much larger speakers than the previous operators, Mama Hooch. Mr Hack said they moved into their apartment on 1 August 2019 and only had about 6 weeks of Mama Hooch before they closed, but there were no noise issues over that time. When Gold Aroma opened there was a massive difference.

[117] Mr Hack said they do not want to see empty shops, they do not want to put people out of business and they do not want to see empty restaurants. They just want everyone to abide by the rules. Other restaurants in the area do not have these sorts of issues.

[118] Mr Hack said they object to the licensee being able to operate after 11.00 pm and he felt sure they would not get the issues they see now if that was the case.

[119] Mr Hack said overall the issues had been happening for 18 months – he had had early conversations and lodged noise complaints. He agreed with a comment made earlier in the hearing of being ‘too little too late’. There is no engagement of an acoustic engineer and no timeline. If the applicants were serious they would have done more.

[120] Mr Hack reiterated that they do not want to put people out of business, and just want people to follow the rules. With the applicant’s history he did not think they could.

Cross-examination of Mr Hack

[121] Mr Spang asked Mr Hack to describe where his building was in relation to Gold Aroma. He said it was about 20 metres away. He said in the block there was a mixture of uses, restaurants, a health shop, a dentist, offices and one other family. He said there were a number of new developments planned for some of the empty land around the area.

[122] Asked how Gold Aroma has affected his family he said the continual thought of knowing that every Friday and Saturday night they would have noise disruption.

⁸ Attachment V to the Hearing Bundle.

[123] Asked what outcome he would like to see come out of the hearing Mr Hack said he would like to see the licence capped at 11.00 pm or whatever other restaurants have. It would then be run as a restaurant/bar rather than a night club.

[124] Sgt Roberson asked if it was the music noise or the people noise that caused the most problems. Mr Hack said it was usually the music noise that woke them up. He said that all the problems seemed to happen after midnight.

[125] Ms Devi questioned Mr Hack on his raising an issue around a sign that offered free food for drinkers. Mr Hack said he took it as encouraging people to drink to get free food. Ms Devi asked if he did not see it as a host responsibility action. Mr Hack said he had not seen it elsewhere and agreed there could be different interpretations.

[126] Ms Devi put it to Mr Hack that there were other bars around and said Victoria Street was not far away. He said all the issues seem to only happen around Gold Aroma.

Committee's questions for Mr Hack

[127] Asked if the disturbance seen in the video happened every night, Mr Hack said no. He can only make a connection to Gold Aroma as it was 3.15 am and it was the only bar open which had just closed.

[128] Asked about the type of noise, Mr Hack said there was the music noise that did increase and decrease with the door opening but also the yelling, etc. outside. He did note that he felt the bass noise had dropped somewhat in recent times but the applicants still had a long way to go.

[129] Asked if he was sure the bottles and such rubbish were from Gold Aroma, he said he could not guarantee it but he was sure it was connected as he has seen people drinking in their cars and then walk to Gold Aroma. He also said if you walk another 100 metres down the road there was no sign of such rubbish.

[130] Asked if he thought the use of the back door would solve the problem, Mr Hack did not think it would because the noise would just go out that way where a new large townhouse development was about to be started. He also said the premises would still have glass at the front.

[131] Mr Hack was asked to comment on the recommendations of Mr Spang which among other things suggested the option to renew the licence for just one year as part of a precautionary approach. He said they had been there for 18 months and nothing much had been done.

Closing submissions

Submissions of the Licensing Inspector

[132] Mr Spang referred to his submissions filed prior to the hearing and said suitability of the applicant has been seriously questioned by the large number of noise complaints, a good number of which were upheld. He said the late night trading and noise from the outside area were the main issues.

[133] Mr Spang said the law requires an applicant to meet the requirements of section 105 and section 131 of the Act and ultimately the intent of the Act.

[134] Mr Spang said in his opinion where trading hours were later than midnight the applicant must demonstrate exceptional systems, staff and training. They should demonstrate that they can operate within compliance. The applicants have been unable to do this.

[135] Mr Spang pointed the committee to the *Amber Indian Restaurant Limited* case and also touched on the *Piahia Saltwater* case which relates to an example of bad management.

[136] Mr Spang said the objectors in his opinion were very credible and were clearly affected by the noise spill.

[137] Mr Spang said we are dealing with a renewal and it has been a very bad year with all the disruptions. The applicant was clearly warned and the evidence is compelling. He did note he was not aware of any evidence of alcohol abuse on the premises.

[138] From the hearing Mr Spang was concerned that the applicant did not even realise they were operating within a liquor ban area. This would allow them to have action taken over people drinking in their cars outside.

[139] Mr Spang said he believes an engineer's report is needed to check the safety and other matters relating to the use of the rear entrance. He expressed concern that an acoustic engineer has not been engaged before now as that report is needed.

[140] Mr Spang said he would not now support a 12 month renewal as discussed in his report mainly because if the applicant did not do what they said they would do it could be some time before the next hearing. He did suggest to the Committee that it could consider adjourning for a period of 2-4 months to see if the applicants did what they say they were going to do before the Committee made the final decision.

Submissions of the Police

[141] Sgt Robertson said in the Police's view there were four main issues

- Noise management.
- Lack of experience in the management of the premises.
- Security management.
- Failure to provide information to the agencies.

[142] Sgt Robertson said the last item was perhaps naivety rather than deliberate.

[143] Sgt. Roberson said this was not a situation where there was significant criminal activity or disorder. He said the objections were compelling and the continued noise complaints were significant. He felt naivety, being new to the premises and not understanding the impact on the neighbours were the issues. He said they have learnt a lot in the lead up to the hearing and would have learnt a lot more from the hearing.

[144] Sgt Robertson said the Committee will need to consider: will the amenity and good order of the locality increase by more than a minor amount if the licence renewal is declined.

[145] Sgt. Robertson said he would, like Mr Spang, not support a 12 month renewal and supported Mr Spang's suggestion of an adjournment.

Submissions of Mr & Mrs Hack

[146] Mr Hack said the saying 'too little too late' mentioned earlier sums up their stance on their objections.

[147] Mr Hack said if he was the only objector he would feel he was perhaps being unreasonable but the other objectors were relying on him to convey their concerns to the Committee.

Submissions of the Applicant

[148] Ms Devi said based on the evidence presented they agreed there is a noise problem. They will engage an acoustic consultant engineer and they will engage with the Council over any issues with the back door.

[149] Ms Devi noted they passed the controlled purchase operation. She also said they just wanted everybody to be safe.

Close of Hearing

[150] After a short recess the Chair advised the Committee would reserve the decision.

Discussion

[151] The applicant was granted a licence to operate the premises in May 2020 and made a renewal application on April 12, 2021.

[152] As stated earlier, there were a total of six unique objectors and the application was opposed by the Police, the Medical Officer of Health and the Licensing Inspector.

[153] The main issue raised by all the objectors and the three agencies was the number of noise complaints and the number of those that were upheld. The data supplied by Mr Alps was extremely helpful to the Committee and very clearly showed the extent of the problem over a long period, more or less the whole time the applicants had been running the premises. This data was backed up by the evidence of all the objectors and especially Mr Hack who explained in detail the disruptions to his family's sleep patterns.

[154] As stated at the hearing, the evidence regarding the noise spill being well beyond the allowable limits was compelling and in the Committee's view that level of noise is unacceptable. In her final submissions, Ms Devi said they accept that there is a noise issue.

[155] The other issue raised by the objectors is the rubbish, cans and bottles and vomit left in the area immediately around Gold Aroma. The applicant suggested strongly that this mess could not be attributed to them as they did not sell the products supplied in the photos attached to Mr Hack's

evidence. The applicant also said many people walk past after visiting other bars and night clubs in the Victoria Street area. Mr Hack noted that the rubbish, etc. is only in the small area around Gold Aroma.

[156] The Committee accepts that while what the applicant says is possibly correct the people making the mess are almost certainly attracted to the area by Gold Aroma. Like Mr Spang, the Committee is surprised to discover at the hearing that the applicants did not understand the ramifications of the alcohol-ban area and the advice from Sgt. Robertson that drinking in a car, preloading, is also banned under an alcohol-ban.

Relevant statutory provisions

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).

Section 131: Criteria for renewal

(1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

- (a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):
- (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:

(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:

(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

(2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

Section 105(1) (1(a) to (g) (j) and (k))

(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:

[...]

(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.

Evaluation under section 131 of the Act

Section 131(1)(a)

[157] This section is covered below.

Section 131(1)(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

[158] The Committee feels strongly, after listening to all the evidence, that refusing to renew the licence with its current hours would likely increase the amenity and good order of the locality by more than a minor amount.

[159] The Committee is of the view that this will be addressed by a truncated renewal of the licence with the Friday and Saturday hours reduced to 12 midnight, no use of the front courtyard area after 11.00 pm, no outdoor speakers operating at any time, and the applicant engaging an acoustic consultant to prepare a comprehensive Noise Management Plan that would clearly set out how noise from the operation of the bar will be controlled and managed to ensure it is fully compliant with the noise criteria.

[160] The applicant may wish to consult with the Licensing Inspector in relation to the qualifications or industry expertise that it should look for in an acoustic consultant and the appropriate scope of a new comprehensive Noise Management Plan. Time for the preparation and implementation of the plan has been considered with need for approval of the plan by the Committee to be before or at the next renewal. The consultant should be given the reporting of Mr Alps to consider, especially in regard to the attention Mr Alps says needs to be given to the opening and closing of the door. The applicant should at all times ensure compliance with fire egress requirements.

Section 131(1)(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129

[161] All the agencies opposed the application for renewal basically around the noise spill and this issue has been dealt with elsewhere in this decision.

Section 131(1)(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol

[162] Mr Hack supplied a photograph of a blackboard sign that for a time was outside the premises. This sign said 'Free food for drinkers'. The Committee accept Mr Juneja's explanation that he believed

he was being a good host by offering food. A more appropriate wording could perhaps say 'free food for customers'.

Section 131(2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

[163] The operation of no other business was considered by the Committee.

Evaluation and findings under section 105 of the Act

Section 105(1)(a): The Object of the Act

[164] Reference has been made to the object of the Act throughout the hearing. We adopt the approach suggested by Heath J in *Venus* and will take a step back after considering all the other criteria to consider whether the grant of an off-licence is consistent with the object of the Act.⁹

Section 105(1)(b): Suitability of the applicant

[165] The on-going noise complaints and number of the complaints being upheld raises major concerns about whether the applicant is suitable to hold a licence with very late trading hours in this location. The Committee is disappointed that despite the volume of complaints very little substantive action has been taken to remedy the problem.

Section 105(1)(c): Local Alcohol Policy

[166] The Christchurch City Council does not have a Local Alcohol Policy.

Section 105(1)(d): The days on which and the hours during which the applicant proposes to sell alcohol

[167] The on-going noise complaints appear to be directly related to the late closing hours on Friday and Saturday evenings. Mrs Hack in the final submissions noted that all the issues only happen after midnight.

Section 105(1)(e): The design and layout of any proposed premises

[168] The Committee accepts the evidence of Mr Alps in that noise is escaping through the front of the premises through the large glass areas which includes the doors. The front outside area is also a place that creates considerable noise from patrons.

⁹ Refer *Venus NZ Ltd* [2015] NZHC 1377 at [20].

Section 105(1)(f)

[169] The applicant does not sell additional goods.

Section 105(1)(g)

[170] The applicant does not provide additional services.

Section 105(1)(j): Whether the applicant has appropriate systems, staff, and training to comply with the law

[171] The Committee accepts the Licensing Inspector's comment that the revised Alcohol Management Plan and Noise Management plans received on 12 May 2021 are an improvement of the initial plans presented. The Committee notes with concern an acoustic consultant had not been engaged by the time of the hearing to produce a comprehensive noise management plan. The Committee would expect an acoustic consultant to include systems and training as part of the report.

[172] Concern was expressed in the hearing about the minimal number of duty managers for the operation of such a high risk premises. The Committee is aware current Covid restrictions have curtailed some of the operations of the premises and that Mr Juneja is likely to have qualified as a duty manager in November 2021.

Section 105(k): Any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103

[173] The three agencies all opposed the renewal of the license.

[174] Mr Spang did suggest he may consider a one year renewal with conditions to deal with the noise spill issues, including the preparation of a comprehensive noise management plan.

Reasons and Decision

[175] The Committee accepts the statement in the final submissions of Ms Devi that they will now engage the services of an acoustics engineer to produce a comprehensive report on how to meet the requirements of the noise issue and will consult with the Council on any matters relating to the use of the rear entrance for patrons.

[176] The Committee also accepts the comments by Mr Hack that they do not want to put people out of business; they do not want empty shops and restaurants in the area. All the objectors want is for the premises to operate within the rules.

[177] We also note Sgt. Roberson's comments that the applicants were inexperienced when they went into the business and that some of the issues related to that as well as their naivety. He said they will have learnt a lot from the process and the hearing.

[178] The Committee referred to the *Piahia Saltwater 2001 Limited* decision in its deliberations.

[179] That the noise spill issues have been ongoing for most of the time the applicant has operated the premises dictates the licence cannot be renewed on the same terms and conditions as the current licence. We do believe it can be renewed with reduced trading hours on Friday and Saturday nights and other conditions, including a one year renewal.

[180] We now take the step back as advised by Heath J. in re *Venus NZ Ltd* and consider the Object of the Act in the light of all the other matters to which we are required to have regard. Can the supply of alcohol by Juneja Groups Limited be undertaken safely and responsibly and can the harm caused by the excessive or inappropriate consumption of alcohol be minimized should the licence be renewed? We believe that both requirements can be met and the renewal of the On-Licence can be granted with amended hours and conditions.

[181] The Committee did consider adjourning the hearing as suggested by Mr Spang and supported by Sgt. Robertson, however, based on the applicant's previous lack of action, it felt the potential continued risk of noise pollution during an adjournment was too high.

[182] The Committee would like to acknowledge the work of the agencies in preparing for and participating in this hearing. It also acknowledges the huge amount of time and effort the agencies have expended over a long time in trying to assist the applicants to operate within the requirements. We also thank the objectors and in particular Mr & Mrs Hack who presented their objection extremely well at the hearing.

Decision

[183] The Committee's decision pursuant to section 130(1) of the Act is that the application by Juneja Groups Limited to renew the On-Licence for the premises is granted for a truncated renewal period of one year, subject to the following conditions:

The Licensed Premises

- (a) The premises are identified on the plan provided with the application for a licence.¹⁰

Section 110 (1) Discretionary Conditions

- (b) The following steps must be taken to ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed:
 - (i) 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 of sales to intoxicated persons.
- (c) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises are concerned:
 - (i) Alcohol must only be sold, supplied and consumed in the area marked on the plan submitted with the application.
 - (ii) Alcohol must be sold, supplied and consumed in accordance with the updated alcohol management plan submitted with the application.
- (d) A new professionally produced comprehensive Noise Management Plan must be commissioned from a suitably qualified acoustic consultant and fully implemented within 12 months of the date of this decision. A copy of the plan must be submitted to the Secretary of the Christchurch DLC, for approval by the Committee, prior to (or at) the consideration of any application for further renewal of the licence.

¹⁰ As attached to the application.

- (e) There shall be no outside speakers turned on at any time, and use of the outside area at the front of the bar to cease at 11.00 pm.

Section 110(2) Compulsory Conditions

- (f) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day or before 1 pm on Anzac Day to any person not present on the premises to dine.
- (g) Alcohol may only be sold and supplied on the following days and during the following hours when the premises are being operated as a Restaurant and Bar:

Interior of premises including the rear courtyard

- Sunday to Thursday 8.00 am to 11.00 pm.
- Friday 8.00 am to 12.00 midnight.
- Saturday 9.00 am to 12.00 midnight.

Front courtyard

- Sunday to Friday 8.00 am to 11.00 pm.
- Saturday 9.00 am to 11.00 pm.

- (h) Water must be freely available to customers at all times while the premises are open for business.

Section 117 Other discretionary conditions

- (i) The following steps must be taken to promote the reasonable consumption of alcohol:
- (i) The licensee must implement and maintain the steps proposed in its Host Responsibility Policy¹¹ aimed at promoting the responsible consumption of alcohol.

Section 119 – Restricted or supervised areas (hotel or tavern)

- (j) The rear courtyard is designated as supervised at all times.
- (k) The whole of the premises is designated as supervised after 9.00 pm.

¹¹ As attached to the application.

[184] The applicant's attention is drawn to section 259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under the Act. Specifically sections 46 to 63 and 231(1). The applicant must comply with all conditions specified on the licence.

Other restrictions and requirements to be noted on the licence

s50 One-way door restrictions in local alcohol policies to be complied with.

s51 Non alcoholic drinks to be available.

s52 Low alcohol drinks to be available.

s53 Food to be available.

s54 Help with information about transport to be available.

s56 Display of signs.

s57 Display of licences.

[185] Section 214 Manager to be on duty at all times and responsible for compliance.

Date when decision takes effect

[186] Pursuant to section 211(6) of the Act, this decision will take effect from 2.00 pm on the 15th November 2021 (approximately two weeks after release of decision) to allow the applicant this time to make arrangements relevant in particular to the reduction of the licensed hours.

DATED at CHRISTCHURCH this 1st day of November 2021



David Blackwell, QSM

Chairperson

Christchurch District Licensing Committee