

Decision No. 60C [2014] 867

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of section 9 Sale of Liquor Act 1989
and section 415(2) the Sale and
Supply of Alcohol Act 2012.

IN THE MATTER

of applications by Redux Café and
Wine Bar, for rehearing of an On-
licence pursuant to s.201(4) of the
Sale and Supply of Alcohol Act 2012,
for the premises situated at 8
Papanui Road Christchurch .

RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Mr P R Rogers

Members: Messrs G Buchanan and A Lawn

HEARING at Christchurch on the 28th April 2014

PRESENT: Mr J Lingens – Applicant.
Martin Ferguson – Senior Liquor Licensing Inspector.
Trevor Joy – Constable NZ Police
Paul Tweed – Health Protection Officer.

PROCEDURAL MATTERS

The Committee were introduced and it was explained that the applicant would give his evidence followed then by cross-examination by the Reporting Agencies. The Reporting Agencies could give evidence and that members of the Committee could ask questions at

anytime and that agencies and applicant would have the opportunity to sum up at the end of the hearing.

BACKGROUND

The application for this licence was first lodged with the Christchurch District Licensing Agency (DLA) on the 9 October 2012. On the 5 December 2012 the DLA issued a decision to grant a tavern style licence for the premises to be known as “Redux Café and Wine Bar”.

The licence was not issued for two reasons, firstly the fit out of the premises had not been completed and the applicant had decided to seek a Resource Consent to extend his hours of operation.

The hours granted in the original decision were 7.00 am to 11.00 pm Sunday to Monday. At a Resource Hearing the applicant sought and was successful in obtaining the hours of 7.00 am to 1.00 am Sunday to Wednesday and 7.00 am to 3.00 am Thursday to Saturday.

Because of the substantial change in the hours it was considered in the best interest of the public if the applicant re-advertised with amended hours. The notices were subsequently placed in a Christchurch newspaper.

No objections were received from the public and reports were called for from the Police and Community Public Health seeking their comment. Both Police and Community Public Health had concerns and requested that a public meeting be held.

THE HEARING

Evidence from the Applicant

QGB Limited the applicant, was represented at the hearing by Mr Johann Lingens Managing Director of the company. He gave the background to the running of the Café/Wine Bar as a small European style bar facing onto a private courtyard. The premises are very small lending credibility to its claim as a discreet environment.

He touched on migratory drinking and made much of the fact that the price of the drinks would put off what is generally thought of as being the problematic drinkers. For this reason he did not see that migratory drinking would be a great problem.

He said that his reason for seeking an extension of the hours from the original application was to allow flexibility around the drinking patterns that might occur.

CROSS EXAMINATION

Martin Ferguson – Senior Liquor Licensing Inspector

Mr Ferguson asked the applicant to clarify that this is a small wine bar that holds 30 people, he agreed. The Inspector informed the Committee that there had been a mistake in the first copy of the Resource Consent, which caused the incorrect hours to be advertised in the public notices. The applicant would therefore be seeking a waiver under Section 208 of the Sale and Supply of Alcohol Act 2012.

Clarification was sought from the applicant as to whether under the applicant's Resource Consent, were noise tests carried out? The applicant replied 'yes' but there were no issues.

Constable Trevor Joy - NZ Police

Queried why the applicant wished to extend his hours from 11.00 pm to 3.00 am. He replied, at that time there was general discussion about the likely environment under a local alcohol policy and he wished to keep his options open under any such policy by seeking a Resource Consent to 3.00 am. In reply to a question concerning a business plan, the applicant replied they had to accommodate the market and he needed to be open to at least 1.00 am.

The Constable asked would a 2.00 am closing be acceptable and the applicant replied that if this mitigated the concerns by capping the closing time at 2.00 am this would be acceptable to him.

Paul Tweed – Canterbury District Health Board

He enquired of the applicant, what off street parking was available and was advised that there was off street parking at the rear of the premises from a lane and a side street. Furthermore there was a gate that could be locked between the premises and the car park meaning that patrons would have to leave via Papanui Road entrance to the café/wine bar. The applicant gave an undertaking that this gate could be locked at 11.00 pm.

Cross examination by the Committee

Mr Lawn asked 'what is your target market' and was told professionals aged between 25 to 50. The applicant was asked what his alcohol turnover would be and he replied 60% of turnover. Under cross examination he was asked about the group that would be in the bar between 1 and 3.00 am, the applicant replied the people that might come in at midnight and then stay. The applicant was asked about his business plan and agreed that he wanted longer hours as an 11.00 pm closure did not work for him. He was asked what would be the tipping point for profitability and the applicant replied he needed to be licensed until 1.00 am for viability with an extension for two or three nights a week.

Mr Rogers asked why he had not traded since the granting of the decision December 2012 and the applicant replied that in a post-quake environment he has had to move slower and making sure not to run into any obstacles.

REPORTING AGENCIES

Martin Ferguson - Senior Licensing Inspector

Mr Ferguson was sworn in and gave his reasons to the Committee as to why this matter should be dealt with as a rehearing and how the original hours had been changed as a result of a Resource Consent Hearing from 11.00 pm to 3.00 am. He stated that these circumstances had arisen as an aftermath of the earthquake and there were another five applications from 2012 still to be considered.

When asked whether a 3.00 am closure was reasonable the Inspector replied that there is no policy to say that they have to shut at a certain time. There is an informal agreement that 3.00 am is the maximum time for the inner city. It was put to the Inspector that a small capacity premises facing into a courtyard, opposite a 24 hour service station and a 24 hour food outlet plus being at a busy intersection, would the granting of this application cause an adverse effect and Mr Ferguson replied, no you wouldn't even know it was there.

The hearing was adjourned for a short time and on returning the parties summed up.

SUMMING UP by Agencies

The Inspector had nothing further to add. The Police addressed the Committee that the key issues were hours and they had no issues of suitability, they commented that the applicant was not interested in late patrons.

The Police wished to take a precautionary approach and were looking at a 1.00 am finish to be looked at again in 12 months and granted on the papers, or the Committee could consider granting to 2.00 am today.

The Medical Officer of Health agreed the suitability was not an issue and the main issue was migration and that a 2.00 am close would cancel this issue as the bar across the road also had a 2.00 am close.

SUMMING UP by the Applicant

Mr Lingens stated that he had had an informal discussion with the Agencies during the adjournment and his aim was always to have a consensus based agreement. He would therefore accept a 2.00 am closure from Thursday through to Saturday and 1.00 am on the other nights. He said the reduction in hours addresses and mitigates the legitimate issues and also removes the probable need for security. The Committee confirmed with the applicant that the licenced hours would need to start at 8.00 am.

The Committee asked the Police if a 2.00 am closure would be acceptable and they replied, yes it would.

The Hearing then closed.

DECISION

As this application was lodged prior to 18 December 2012 the matter has to be dealt with under the Sale of Liquor Act 1989 pursuant to s.415(1) of the Sale and Supply of Alcohol Act 2012. Subsection (2) of s.415 states section (1) is subject to s.406 and 407 of the Sale and Supply of Alcohol Act 2012. The applicant did not ask under 406(4) that the application be dealt with under s.407, therefore the criteria under the Sale and Supply of Alcohol Act 2012 shall not apply.

As commented previously a decision was granted in 2012 but the licence was never issued due to building work not being completed and a Resource Consent application that the applicant was seeking. This was for an extension of hours to trade from 7.00 am to 1.00 am Sunday to Wednesday and 7.00 am to 3.00 am Thursday to Saturday.

This matter was brought before this Committee as a result of what was effectively opposition from the New Zealand Police and the Medical Officer of Health. That opposition was due to a change of hours granted under the previous decision.

During the adjournment, a consensus was reached between all parties that a 2.00 am closure on Thursday to Saturday would be acceptable to all parties. The agencies were all in agreement that suitability of the applicant was not at issue.

The Committee has concerns over the migratory drinking issue and the applicant agreed that he would give an undertaking that if the Agencies considered there was a problem with migratory drinking then the applicant would bring in a one way door policy.

As mentioned by the Inspector there was a mistake in the advertising of the Public Notices relating to the new hours and the applicant had sought a waiver under s.208 of the new Act. The Committee believes that mistake does not affect the application. That waiver is hereby granted.

The Committee wishes to comment that they thought the applicant would have assisted his case if he had come to the meeting better prepared.

The Committee noted that the new default hours s.42(1)(a), do not allow trading prior to 8.00 am the Resource Consent granted trading from 7.00 am however the default trading hours will apply.

The Committee concurs with the consensus that has been agreed to and hereby grant the licence with the following conditions. It is noted that the new Act s.110(2)(c) requires all licenses issued to have a condition regarding the supply of free water this will therefore form part of this decision.

CONDITIONS

These conditions being the conditions under the Sale of Liquor Act 1989.

The applicant's attention is drawn to ss.25 and 115(3) of the Sale of Liquor Act 1989, obliging the holder of an on-licence to display:-

1. A sign attached to the exterior of the premises, so as to be easily read by persons outside each principal entrance, stating the ordinary hours of business during which the premises will be open for the sale of liquor; **AND**
2. A copy of the licence, and of the conditions of the licence, attached to the interior of the premises so as to be easily read by persons entering through each principal entrance; **AND**
3. A sign prominently displayed inside the premises, which identifies by name the manager for the time being on duty.

The entrance from 8 Papanui Road, Christchurch is designated as the principal entrance.

The licence will be subject to the following conditions:

- (a) The licensee must have available for consumption on the premises, at all times when the premises re open for the sale of liquor, a reasonable range of non-alcoholic refreshments and low-alcohol beverages:
- (b) No liquor is to be sold or supplied on Good Friday, Easter Sunday, Christmas Day or before 1.00 pm on Anzac Day to any person other than persons who are present on the premises for the purpose of dining.
- (c) Liquor may be sold only on the following days and during the following hours:

Sunday to Wednesday 8.00 am to 1.00 am and Thursday to Saturday 8.00 am to 2.00 am the following day.
- (d) Food must be available for consumption on the premises as follows:

At all times when the premises are authorised to be open for the sale of liquor, food of a range and style similar to that shown on any menu submitted or a range of snack foods in the nature of pies, sandwiches, filled rolls, pizzas and the like, must be conveniently available for all patrons and the availability of those foodstuffs must be notified to them by appropriate notices throughout the premises.
- (e) The whole of the premises is designated as a Supervised area.
- (f) The licensee must ensure that signs are prominently displayed within the licensed premises detailing information regarding alternative forms of transport from the premises.
- (g) The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of liquor.

The licensee must ensure that the provisions of the Act relating to the sale and supply of liquor to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restriction on the supply of liquor to minors and the complete prohibition on sales to intoxicated persons.

Pursuant to s.110(2)(c) of the Sale and Supply of Alcohol Act 2012:-

Drinking water will be freely available on the premises as specified in the application.

THE LICENSED PREMISES

In terms of Reg. 7 of the Sale of Liquor Regulations 1990 the sale or supply or consumption of liquor is authorised in the whole of the premise. The premises, situated at 8 Papanui Road, Christchurch are more precisely identified in a plan date stamped as received by the Christchurch District Licensing Agency on 9 October 2012.

DATED at Christchurch this 2 May 2014.

A handwritten signature in blue ink, appearing to read 'P R Rogers', is written over a light blue grid background.

P R Rogers

Chairperson

CHRISTCHURCH DISTRICT LICENSING COMMITTEE

