

Decision Number 60D [2014] 600

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

AND

IN THE MATTER of an application by
Rossco's Holdings Ltd
for renewal of an On Licence
in respect of premises known as
Coasters Tavern at 280 Main
North Road, Christchurch

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairman Mr R J Wilson JP
Members Ms T J Surrey
Mr D L Blackwell QSM

Hearing at Christchurch 25 March 2014

Present Mr P Egden Counsel for the applicant
Mr R Murdoch Rossco's Holdings Ltd
Mr B Giddens Rossco's Holdings Ltd

Ms L Arnott, CCC Planner

In Attendance Mr P Spang Licensing Inspector
Constable S Joy NZ Police
Mr P Shaw for the MOH
Ms B Strang Committee Adviser
Ms A Bryant Committee Adviser

and members of the public

INTRODUCTION

(1) We are dealing with an application by Rossco's Holdings Ltd for the renewal of an On Licence for premises known as Coasters Tavern situated at 280 Main North Road/1

Daniels Road, Christchurch. The conditions sought are as for the existing licence with the exception that a change is sought for the trading hours. The trading hours are currently Monday to Sunday 7.00 am to 11 pm and the applicant seeks trading hours of Monday to Sunday 7.00 am to 1.30 am the following day. Under s43 (1) (a) of the Act the trading hours are now of course amended to conform with the national default maximum trading hours that is from 8.00 am The application was received by the Council on 26 November 2013 and thus must be determined under s407 of the Act. There are no objections either from reporting agencies or from the public.

(2) The Committee has determined to consider this matter by way of a public hearing for two reasons. Firstly this is the first application to come before the Committee under the new legislation which involves an extension of hours. In our view given the object of the Act is to minimise the harm caused by the excessive or inappropriate consumption of alcohol and the interest of the public in the matter of hours as these might relate to that, it would not be appropriate to deal with the matter on the papers. Secondly we note that the Sale and Supply of Alcohol Act 2012 places additional responsibilities on District Licensing Committees to those found in the previous legislation. Section 105 (1) (h) of the Act requires us to form an opinion on the effects of granting the licence on the amenity and good order of the locality. Section 106 goes on to give guidance as to what we must have regard to in forming that opinion. In our view it is insufficient to rely on the fact that a Resource Consent has already been granted which permits the hours sought. We must satisfy ourselves on the matters set out in s105 and s106. We acknowledge that the necessity for further examination of this issue imposes additional inconvenience and cost on the applicant. We have endeavoured to keep it to the minimum given our statutory responsibilities as we see them.

(3) For the record we can state that the Committee has no concerns with aspects of the application other than the proposed extension of hours. From the reports we have received and our own enquiries of the Council's files we are satisfied that there are no significant issues with the management of these premises. Our focus is on the requirements of s105 (1) (h).

THE HEARING

(4) Mr Egden said in his opening remarks that by all accounts this is a well run establishment. There is no history of issues relating to noise or vandalism. The tavern caters mainly for people living in close proximity some of whom have maintained patronage over many years. People come for food, familiarity and company. There is a TAB on the premises and SKY TV is provided with an emphasis on sport. The

extension of hours is being sought because often televised sport finishes at a later hour than the current closing hour of 11 pm. There have been many occasions on which patrons have had to leave the premises to watch the second half of a game. Mr Egden accepted that the Committee had to form its own view on the matter of any reduction of amenity but pointed out that the Inspector had considered the proposed extended hours and raised no objection. There have also been no objections raised by neighbours. To the contrary the nearest neighbour who is the most likely to be affected has provided an email in support of the application referring to trading hours up to 1.00 am.

(5) With particular reference to s106 and current and possible future noise levels Mr Egden said that there was no evidence that current levels are a problem. He did not believe the proposed closing time of 1.30 am would affect neighbours. There has been no evidence of vandalism or nuisance. There are other licensed premises in the vicinity which have different opening hours. The hours sought in this application are not out of order with those premises.

(6) Mr Egden further pointed out that the premises are in a commercial zone although there are residential properties nearby. Neighbours have however not objected and his submission is that the extension of hours will not have a negative impact on them. Finally Mr Egden presented a plan of the premises and asked the Committee to approve it as a correct plan. This is necessary as some parts of the Council's file appear to have been lost in the earthquake in 2010 and in July 2010 some changes were made to the outdoor area which have not previously been defined.

(7) Mr Ross Murdoch made himself available for questioning and was sworn in. In response to Mr Wilson, Mr Murdoch said that the tavern had five Duty Managers all experienced including himself. He said they had an aggressive noise control management plan. Patronage is generally an older age group many of whom enjoy watching the late sport particularly from Australia. Ms Surrey asked whether he had applied for Special Licences in the past and was told that he had not as the tavern was unable to accept special functions at the moment. Mr Murdoch confirmed that there had been no noise complaints and that he had a good relationship with neighbours many of whom were regular patrons.

(8) Constable Joy asked if the licence were granted with the requested hours how many people would be on the premises. Mr Murdoch responded that it would be 30 or 40, possibly 70 if it were a big game. He pointed out that the premises would not be open late every night mainly Fridays and Saturdays and only if there was a late sports event. Otherwise the intention would be to shut early. Mr Murdoch confirmed that it would be his intention to extend the hours of the chefs should the hours be extended. He also said

that the practice was to lock the doors opening directly to the car park later in the evening. This forced patrons to exit the tavern on to the street and then walk around to the car park thus minimising noise.

(9) Mr Egden asked Mr Murdoch to confirm that a lot of patrons walked to the tavern. He did so but was unable to offer an exact figure but could say it was quite a number. Mr Egden also asked Mr Murdoch to confirm that a condition of the Resource Consent was that an acoustic assessment be undertaken in a month and that the Council may review the consent every six months with the possibility the Consent could be withdrawn if noise became an issue. Mr Murdoch agreed this was so.

(10) Mr Brett Giddens who is an adviser to the applicant on planning matters was sworn in. In answer to a question from Ms Surrey he pointed out that the Resource Consent permitted operating hours until 1.30 am. This meant that the premises had to be vacated by 1.30 am. He clarified the matter of the six monthly reviews of the Resource Consent by saying that there had to be proof of a problem before the process could start. Mr Shaw asked that if patrons had to be gone by 1.30 am did the sale of liquor have to stop at 1 am. Mr Giddens understood that sales could continue until 1.30 am but that drinks had to be consumed and patrons gone by that time. He was of the view that a 1 am last sale then thirty minutes to drink up would work. Constable Joy queried the number of persons permitted in the outside area being fifteen in the application. Mr Giddens said this was on the advice of an acoustics engineer who had prepared a model on general noise and used software to come up with that number. Mr Giddens confirmed that there would be no deliveries or emptying of bottles into skips after 10 pm. Mr Egden asked Mr Giddens to describe the outside area. He described it as quite contained and confined, partially walled. He confirmed that no speakers or TV were permitted outside after 10 pm and that the area was mainly used by smokers.

(11) Ms Lisa Arnott was sworn in. She confirmed that she was the Council's planning officer responsible for managing the Resource Consent application. She was asked by Ms Surrey to explain the process that would follow if there were issues with compliance with the Consent. Ms Arnott said she understood there would need to be complaints by neighbours before the Council would investigate whether the conditions of consent were being adhered to. This could lead to revocation. She also said she was aware that generally if sale of liquor were to finish at 1.30 am then patrons could potentially be on the premises until 2.00 am. However the hours of operation in the Resource Consent were until 1.30 am and everybody had to be off the premises by then. Ms Arnott confirmed that she had considered the tabled plan of the premises for which approval was sought and had no issue with it. Mr Wilson asked whether any issues had arisen during the processing of the Resource Consent application and whether negotiations

between the parties had been required. Ms Arnott said the Council was originally concerned about noise and disturbance particularly as the original application had been for even greater hours. There were concerns the tavern could become a “destination place”. For this reason the hours were negotiated back. Ms Arnott was of the opinion that the neighbour most likely to be affected was the occupier of No 3 Daniels Road the immediately adjacent property. People living across Daniels Road were somewhat separated and less likely to be affected. The Committee notes that the occupant of No 3 Daniels Road has supplied an email in which he raises no objection to the extension of hours.

(12) Mr Shaw asked Ms Arnott for clarification that a 1.30 am vacate time included staff. She replied that 1.30 am was the extent of the operating hours not the opening hours. The premises had to be vacated by 1.30 am. Mr Shaw then asked about the public notification of applications for consent for licensed properties. Ms Arnott said that not every application had to be notified. The decision to notify or not was made on the basis of evidence of the likely effects on neighbours. She confirmed that each application was considered on its merits. She conceded that with declining newspaper sales advertisements could fail to come to the notice of potentially affected persons. A notice was put up on the building and an advertisement was placed in The Press as required by the Sale and Supply of Alcohol Act 2012. She was unable to confirm whether neighbours were aware of the application.

(13) Mr Wilson then asked Mr Egden given the discussion around hours whether the applicants would be prepared to amend the application to provide for sales ending at 1.00 am with everyone out by 1.30 am. Mr Egden responded by pointing out that Mr Murdoch was an experienced operator and no previous issues had arisen. He said that although it had not come out in evidence it was Mr Murdoch’s intention not to sell jugs beyond midnight with glasses only for the remainder of the evening. The matter should be left to him. He would not want to be put in the position of not being able to sell a glass at say ten minutes past one. He urged that the licence should go through to 1.30 am with all patrons off the premises by that time. That is a management issue. Constable Joy thought that this could pose problems for Police and said he was unaware of anyone having a licence in similar terms. It would be important to ensure management could get patrons off the premises by 1.30 am.

(14) Mr Egden in final submissions urged the Committee to grant the licence as requested. He said we could have confidence in Mr Murdoch who was a responsible operator who would not put his licence at risk.

RESERVED DECISION

(15) As a preliminary matter the Committee approves the plan of the premises tabled by the applicant subject to measurements being taken and provided to the Inspector for inclusion in the Council's file.

(16) As indicated earlier we were satisfied prior to the hearing with all aspects of this application other than the matter of the proposed extension of hours from 11 pm to 1.30 am the following morning. We have had the opportunity to examine the Council's file on the Resource Consent application and acknowledge that the same issue was well canvassed prior to consent being issued. We have considered the applicant's Noise Management Plan which we accept is well thought out and comprehensive. We also accept the applicant's assurance that staff are well trained and aggressive (to use his term) in enforcing the policy. We are satisfied that the amenity and good order of the locality will not be reduced to more than a minor extent.

(17) We are however concerned that if the application is granted as sought there will be inconsistencies between the decision under the Sale and Supply of Alcohol Act 2012 and the Resource Consent issued under the Resource Management Act 1991. Under the latter everybody has to be off the premises by 1.30 am. The possible interpretation of our approving the additional hours as requested could be that sales continue until 1.30 am and that patrons could then exercise the customary half hour to drink up effectively extending the operating hours to 2 am. This would of course be in breach of the Resource Consent.

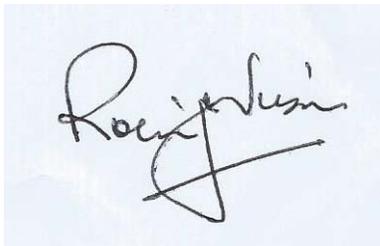
(18) Clearly it would be tidier for the hours under which alcohol may be sold to be reduced to 1 am. With the customary half hour to drink up, patrons would then be required to vacate the premises by 1.30 am consistent with the Resource Consent. Constable Joy made the point that this would be easier for the Police to enforce. Mr Egden in his submissions urged us not to take this course but to rely on the applicant to comply with a licence to allow sales to 1.30 am.

(19) We acknowledge that the applicant has a good record in the industry and are satisfied that he would do his best to keep to the hours as sought. Nevertheless granting the licence to 1.30 am would put him in the position of being able to make sales right up until the time that everybody has to be off the premises to comply with the conditions of the Resource Consent. That is clearly not practicable as some drink up time would have to be allowed. In reality reducing the hours to 1.00 am would likely only deprive him of single glass sales over a period of perhaps ten to fifteen minutes when time is allowed

for drinking up and vacating the premises. We therefore do not believe 1.00 am closing is unreasonable.

(20) Our decision is therefore that the licence relating to Coasters Tavern will be renewed for a period of three years on the previous conditions with the amendment that trading hours will now be Monday to Sunday 8 am to 1.00 am the following day. In addition there will be an additional condition that drinking water is to be made freely available at all times.

DATED at CHRISTCHURCH this 31st day of March 2014

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

R J Wilson JP
Chairman