

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

AND

IN THE MATTER of an application by
SAMARTH RAJESHKUMAR
LIMBACHIYA for an OFF
Licence pursuant to s99 of
the Act for premises known
as Harewood Bottle Store
situated at 2D Trafford St
Christchurch.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson Mr R.J.Wilson JP
Members Mr A.J.Lawn
Mr P.Rogers

Hearing at Christchurch on 13th and 14th July 2017

Appearances Mr A.Riches Counsel for the applicant
Mr S.Limbachiya applicant
Ms J.Davison District Licensing Inspector, CCC (to assist)
Sgt J.Harris NZ Police (to assist)
Ms H.Barbour for the Medical Officer of Health (to assist)
Mr A. Campbell Fendalton-Waimairi-Harewood Community Board
Mr B.Tulloch Public Objector
Mr A.Bree, Mrs E.Bree and Dylan Bree Public Objectors
Mrs C.King Public Objector
Mr C.Fussell Public Objector
Mr D.Wynn Public Objector
Mrs S.Manze Public Objector

Mr M.Burlton Public Objector
Mr T.Donaldson Public Objector
Mr D.Royds Public Objector

INTRODUCTION

[1] This is an application by Samarth Rajeshkumar Limbachiya for an Off-Licence for premises at 2D Trafford Street, Christchurch to be known as Harewood Bottle Store. The premises are located in a small block of shops in a predominantly residential area and have not been licensed before. The application is not opposed by the Inspector, the NZ Police or the Medical Officer of Health but has attracted public objections hence the need for this hearing.

[2] Mr Limbachiya originally lodged his application for another shop in the block but on being offered the tenancy of an adjoining unit sought to add that to his application. He was required to readvertise the application, further objections were accepted and updated reports sought. Unfortunately the offer of the adjoining shops was withdrawn while all this was going on and Mr Limbachiya was offered another unit in the block. As all the units are essentially the same the Committee saw no need to require him to advertise a third time and a waiver was granted pursuant to s208 to cover this.

[3] From the outset the application attracted a lot of public interest and there was some coverage in the media. By the closing date there were 86 public objections and a petition with some 1144 signatures was produced. The Committee records that it has read all the public submissions and examined the petition. Most of the objections appear to be from individuals who on the face of it meet the criteria in s102(1) of the Act that they have more interest in the matter than the public generally. Rather than attempting to examine each one to exclude those who may not, the Committee adopted the procedure of satisfying itself with respect to only those people who sought to speak to their submissions. We said we were prepared to accept that persons who lived within 500 metres of the proposed bottle shop qualified as objectors but others living outside that perimeter were welcome to submit their claims for examination by the Committee. A short adjournment was taken while the approximately 50 objectors who had turned up sorted out who wished to proceed to the next stage of speaking to their objections in evidence. Eleven adults and one child wished to give evidence but

one was deemed not to meet the criteria and withdrew. Copies of the Inspector's report and the Police brief of evidence were distributed to parties at this point.

[4] With respect to the petition the Committee indicated that it would adopt its usual procedure of admitting the document while noting that its evidential value was limited by the fact that some signatories were clearly not qualified to object pursuant to s102(1) and in any event were not present to submit themselves to cross examination.

OPENING SUBMISSIONS

[5] Counsel for the applicant noted the lack of opposition from the authorities but acknowledged the large number of public objections. He urged the Committee to limit objectors to those living within 500 metres of the proposed bottle store given that there were two other liquor stores and a supermarket selling alcohol approximately 1 kilometre away. He argued that persons living outside the 500 metre perimeter would have no interest beyond that of general members of the public because of their proximity to other outlets. Mr Riches noted that at least 16 objections focused on traffic issues which fell outside the matters the Committee must consider as set out in s105 of the Act. He also said that virtually all the objections in his view were about the sale of alcohol generally rather than having particular relevance to this site. Many objections appeared to be of a similar or identical nature and may have been produced with the assistance of the same person.

[6] With respect to the petition Mr Riches objected to its introduction. He said that there was no evidence that any of the alleged 1144 persons who had signed the petition had a greater interest in the application than the public generally.

[7] He then proceeded to address each of the criteria the Committee is obliged to consider under s105 noting again that none of the Agencies had raised any opposition to the granting of the licence. He argued that the application met all the requirements and should be granted.

[8] Miss Davison, District Licensing Inspector also made an opening submission in which she reminded the Committee of the law particularly that relating to dealing with objectors. She provided guidance to the Committee on its obligations with

respect to the various matters it is required to consider as set out in ss105 and 106. Sergeant Harris and Ms Barbour had no opening submissions to make.

[9] The committee then heard from Mr Aaron Campbell who had been appointed by the local Community Board pursuant to s204(2)(b) to attend the hearing in support of the public objectors. Mr Campbell said the Community Board had heard submissions from two of the objectors and had resolved to support them. It was concerned about the proximity of the proposed bottle store to public parks and its location in what was predominantly a residential area.

[10] The Chairperson then addressed objectors concerning their role in the proceedings. He welcomed their participation and said he had no wish to restrict what they wished to tell the Committee but pointed out that if it was not relevant it could not be taken into account. Objectors were given guidance as to how they would be expected to proceed. It was stressed that the Committee was quite prepared to hear from any objector who met the test of having a greater interest than an ordinary member of the public. However given the number of objectors it might assist the hearing to proceed more expeditiously if the objectors group agreed on a few people to act as spokespersons while others could listen but not speak in the knowledge that the Committee had read their written submissions and would take them into account. As recorded above 11 objectors put themselves forward to take an active part in the hearing by way of giving oral evidence and participation in cross examination. The wife of one objector wished to give evidence on her own behalf as did her 12 year old son but did not take part in the cross examination. One objector failed to satisfy the Committee that he met the criteria and his request to give evidence was declined.

EVIDENCE OF THE APPLICANT

[11] Mr Limbachiya had filed a written brief of evidence which he read at the Committee's request. In summary he said that he had four years experience working in the liquor industry for his uncle who owned a bottle shop in another suburb. He held a Duty Manager's Certificate. Encouraged by his uncle and with the financial support of both the uncle and his father he now sought to establish his own business. He was attracted to the site in Trafford Street as it was on the corner of the busy Harewood Road which provided a main route for people leaving the business area of the city. He thought most of his customers would be

commuters stopping to buy alcohol on their way home. He did not envisage many customers coming from the local area surrounding his shop. It was his intention to concentrate on the higher end of the market. He intended to enter into a franchise agreement with the Liquor Centre group which had a policy of not permitting advertising on the exterior of its stores. Advertising was in fact only by way of newspaper advertisements and on line. There was an App. available that intending alcohol purchasers could download so as to source available stock and current specials.

[12] Mr Limbachiya said he was not aware of any issues in terms of nuisance or vandalism in the area resulting from the two existing Off Licence premises. He did not believe that his store would contribute to any increase in such behavior. He expected his patronage to be mainly from vehicle traffic and purchasers would be unlikely to consume alcohol in the immediate area. Nor did he believe that there would be any issues arising from the proximity of schools in the area.

[13] Mr Limbachiya said that he would take his obligations as a store owner and under the Sale and Supply of Alcohol Act seriously. He saw himself as part of the community and wanted to work with local people to deal with any issues which may arise. He was aware of the level of local opposition to his application but pointed out that the same people did not appear to have any issue with the existing Off Licence premises within 1 kilometre of his proposed store. He did not believe the granting of the licence would affect the amenity or good order of the area and would be consistent with minimizing the harm caused by the sale and supply of alcohol.

[15] In response to examination of his evidence by Mr Riches, Mr Limbachiya said that littering at his present place of employment was not a problem. There was not much graffiti and staff would clean it up as it appeared. If he became aware that people were loitering near the shop he would approach them with the suggestion that they move along or an offer of assistance with transport if required. He clarified that the most profit is to be obtained by sales of more expensive bottles of wine and spirits. There is not much profit in the sale of beer or RTDs. He did not expect to compete with the supermarkets in beer and wine sales.

CROSS EXAMINATION

[16] The District Licensing Inspector sought clarification as to the hours Mr Limbachiya intended to be open. He confirmed that he intended to close early on quiet nights possibly around 8 pm during the week and on Sundays. With reference to signage Mr Limbachiya agreed to provide an undertaking that he would not have any signage outside the shop other than the Liquor Centre name on the window. When asked about whether he would engage in price cutting with the nearby Henry's shop, the applicant said that he would not. He said that in practice Henry's undercut the Liquor Centre and they could not compete on that. He also pointed out that the price of specials was determined by the Liquor Centre and he was unable to change them.

[17] Sergeant Harris wanted to know whether Mr Limbachiya had spoken to the adjacent dairy owner about the incidents of trouble he had experienced. He replied that he had but thought that these were not major things. Regarding staff he confirmed that it was his intention to staff the shop by himself during the day but would have two people on in the evening. The second person would likely be his uncle who was an experienced operator. With respect to handling people who were difficult or confrontational Mr Limbachiya said that he was not a confrontational person himself and any response would be polite. He would not respond in any way to violence or threats of violence but allow the offenders to take what they wanted. The Liquor Centre did not seek to increase business by price cutting but by providing good service and having consistent pricing.

[18] Ms Barbour for the Medical Officer of Health asked Mr Limbachiya to confirm that there would be no product or price advertising outside the shop. He also said that there would not be a flag or sandwich board on the footpath although he might have an "Open" sign in the window. With respect to CCTV cameras he said that he intended to have three out the front, three out the back and six inside the shop including the chiller. He confirmed that he did not plan to have any other staff apart from his uncle who would help at busy times. He had not heard of the ServeWise on line training programme. His approach to aggressive confrontation was to stay calm and focused. He would carry a panic button connected to the alarm system. Liquor Centre group did not complete contracts with their members so non compliance with their policies and rules could lead to

termination of the franchise arrangement at short notice. Mr Limbachiya agreed that the existing external lighting was insufficient and undertook to improve it. It was his intention to fit roller doors on the front of the shop and bars to resist ram raids. No single bottles would be sold and broken boxes of alcohol would be returned to the supplier.

QUESTIONS FROM OBJECTORS

[18] Mr Tulloch, Mr Bree, Mrs King, Mr Fussell, Mr Wynn, Mr Burlton and Mr Donaldson all came forward one by one to cross examine the applicant. There were common themes to their questioning. All raised concerns about how the applicant proposed to attract customers given that he had agreed there would be no external signs. Mr Limbachiya said he did not need signs for passing traffic nor would he be looking for impulse buyers. He thought almost everyone had a smart phone and there was an App available which would give information on stock and specials. He likened the exterior of his store to the Liquor Centre at Kaiapoi which had no external signage. He agreed however that the Kaiapoi shop was in a different type of area to Trafford Street.

[19] Mr Limbachiya responded to questions about the franchise arrangements and was confident an agreement would be reached once he had confirmation of his licence. He was unaware of anyone who had lost their franchise arrangements because of failing to comply with requirements. He said the local Liquor Centre representative visited regularly to satisfy himself that stores were being run properly and to offer assistance if needed.

[20] Security was a major concern of objectors. They questioned why Mr Limbachiya thought his shop would not attract more crime. They wanted to know whether he had made himself familiar with the area and in particular was he aware of the nearby Charnwood Crescent area which had a bad reputation. Mr Limbachiya said he had visited the area on a number of occasions and thought he was familiar with it. He could not see why his shop would attract more crime. He pointed to the security cameras, the proposed roller doors and the links to a security company as measures all intended to deter crime. He repeated that he would not be serving anyone who did not look right. He was aware that alcohol and cigarettes had been the target of gangs but he had not heard of any gangs in this neighbourhood. To a question of how long he thought it might take for the

Police to respond to an incident he agreed it might be as much as 20 minutes. The questioner observed that it was likely to be neighbours who responded first thereby putting themselves at risk.

[21] Objectors were also worried about the hours of opening and the amount of time there would be only one person in the shop. They thought this increased the risk. Mr Limbachiya repeated that he was unlikely to remain open for all the hours he had requested in his application. He thought that other than Friday or Saturday nights he would probably close by 8 pm. During the busy evenings he expected his uncle to be in the shop assisting.

POINTS OF CLARIFICATION FROM THE COMMITTEE

[22] Mr Lawn queried why there was no formal loan agreement covering the finance for the business. Mr Limbachiya responded that it was unnecessary as it was a family matter. Mr Limbachiya's uncle would provide support and guidance and would assist in the shop at busy periods. He held a Manager's Certificate. Mr Limbachiya was able to recite the signs of intoxication but was unaware of the SCAB tool. Mr Limbachiya clarified that the display areas shown on the plan in the middle of the shop would be dump stacks, that is boxes on the floor. Clarification was also sought on the type of security doors which would be put in place. Mr Limbachiya agreed that solid roller doors would not look very nice and would attract graffiti. He agreed to consider a mesh type as an alternative. As to his knowledge of the area Mr Limbachiya said that he had visited about twice a month in the last year. He confirmed he was not bound by the franchise agreement. In particular he was able to refuse to stock certain items and could even refuse advertised specials. His aim was to compete on the range of products stocked not price.

[23] Mr Rogers sought clarification as to who attends to litter in his present place of employment. Mr Limbachiya said it was a family business and any one of them would tidy up if required. He confirmed it was not his intention to offer samples. Rubbish would be placed in Council bins. There would be a booklet beside the till which would have a table for calculating the age of customers.

RE EXAMINATION

[24] Mr Riches asked Mr Limbachiya to confirm that the neighbouring dairy was open until 8 or 8.30 pm in the evenings and the fish and chip shop usually closed at 8 pm. The bottle store would close at a similar hour other than on Friday and Saturday nights. Mr Limbachiya would give a written undertaking that there would be no external advertising and that there would be no individual sales less than \$7 an item.

EVIDENCE OF THE INSPECTOR

[25] Ms Davison had provided a written brief of evidence and was not required to read it. She was asked however to speak to her observations of the area and to provide information on enforcement of licence conditions for the benefit of the objectors. She said she had spent some time in the area including walking through the parks. She had not noticed any litter or evidence that people had been drinking in the area. She had observed outside the proposed bottle shop for some time and had not noticed significant numbers of school children passing. Those that did seemed intent on their own business and paid no particular attention to the shops. The Christchurch City Council graffiti team had provided some brief comments on graffiti in the area. There was no indication that it was much different from anywhere else.

[26] Licensing Inspectors visited licensed premises on a regular basis and more often if there had been issues or complaints. The preferred method of achieving compliance was by encouragement and frequent monitoring, but if necessary an application can be made to the Alcohol Regulatory and Licensing Authority seeking suspension or cancellation of a licence. Opposition could also be made to renewal of a licence when such came before the District Licensing Committee.

CROSS EXAMINATION

[27] Ms Davison agreed in response to a question from Mr Riches that enforcement action was more frequently taken in respect of On-Licence premises. Off-Licences did not cause many problems. Failure to display signs was one area

of breach and she usually carried a supply of appropriate signs with her when she visited so deficiencies could be rectified on the spot.

{28] The objectors questioned Ms Davison about her observations of the area. She confirmed that although it was a hot summer day when she walked in the park she saw no one drinking nor any litter suggesting that alcohol consumption had taken place. She did not think the existence of a bottle store made it a target for criminals. She would not have a problem living next to a bottle store and did in fact live close to an On-Licence premise. With respect to enforcement she agreed that a high standard of proof was required to secure a suspension or cancellation of licence. She agreed none had been cancelled in the District this year. However the Agencies jointly conducted regular controlled purchase operations. They usually did three such operations a year visiting 25 premises on each occasion. This gave fairly good coverage. In response to suggestions that the applicant had been vague in relation to his plans for roller doors she observed that he may be simply responding to what the community was seeking.

EVIDENCE OF NZ POLICE

[29] Sergeant Harris had provided a written brief of evidence which had been made available to objectors just prior to the hearing. He was invited to highlight certain points particularly areas of concern to the objectors. A number of charts were tabled in evidence. In summary Sergeant Harris said that there was nothing significant about this area when it came to Police callouts except perhaps a slightly higher incidence of domestic related incidents. He remembered when stationed at Papanui that he had attended a number of incidents in Charnwood Crescent and a couple of minor robberies at the dairy but that was some years ago. He did not recall ever having been called to any incident in Trafford Street itself.

CROSS EXAMINATION

[30] Sergeant Harris conceded to Mr Riches that more crimes were attributed to On-Licences than Off-Licences. He did not think preloading would occur around an isolated suburban bottle store. If there was a big event in the city people might purchase alcohol on their way but were unlikely to consume it near the place of

purchase. It is possible that youths might purchase alcohol then drink it in public parks but he thought it less likely to happen in residential areas.

[31] The objectors were anxious about Police response times and the likelihood of incidents associated with a bottle store. Sergeant Harris said that the time it took Police to respond depended on the time of day and the priority accorded a call. If it was accorded a high priority Police could be there in 6 to 8 minutes while a low priority matter might not be attended to for a day or two. He believed Police had the staff to cope and the addition of another bottle store would not make any difference. He did not think the granting of this application would have any effect on alcohol related crime. There was some discussion of the role of neighbours when an incident occurred. He observed that the Police would be more concerned for the neighbours' safety if they intervened than the shop owner who would probably make himself scarce. He advised caution in getting involved. Sergeant Harris thought that the ability to purchase alcohol from a local bottle shop might increase incidents in the Charnwood Crescent area and the number of callouts to domestic incidents.

THE HEARING ADJOURNED OVERNIGHT AT THIS POINT

[32] On resuming Mr Riches advised the Committee that Mr Limbachiya had given an undertaking that he would install a mesh roller door rather than a solid one thus eliminating any risk of graffiti and it would also look better.

EVIDENCE OF OBJECTORS AND RELATED CROSS EXAMINATION

[33] Objectors had been advised that they did not need to read their written submissions which were part of the Committee's bundle of papers. They could speak to them as they wished. Mr Royds presented a number of maps, charts and research reports. Mr Riches objected to the research reports because he had not been given the opportunity to study them. However the Committee agreed to admit them at this stage. One of the charts depicted where people who had lodged objections lived. A large number were in close proximity to the proposed store. Another showed a socially deprived area to the west of Trafford Street. The research papers tabled by Mr Royds concluded that a link could be drawn between additional liquor outlets and increased crime, between increased consumption of alcohol and increased social harm. He believed there were

sufficient existing licences in the area and there was no need for another. He had seen intoxicated people on the street and witnessed them harassing a person walking a dog. In answer to Mr Riches, Mr Royds agreed he did not know where the intoxicated people had come from.

[34] Mr Tulloch was concerned about the hours Mr Limbachiya was proposing to work in the shop. He had calculated the hours the shop would be open and thought Mr Limbachiya would have to work at least 76 hours a week if he was covering it by himself. The implication is that through tiredness Mr Limbachiya might not be able to manage the business safely and others might be put at risk. He had also enquired into the Liquor Centre requirements for premises joining their group. He said that Liquor Centre required a floor area about twice as much as in the shop Mr Limbachiya planned to use. He thought the chance of Mr Limbachiya being successful in joining the franchise was not great. This raised issues of what he would do then. Mr Tulloch drew attention to an article published in the Australia & New Zealand Journal of Public Health entitled "Close proximity of Liquor Outlets associated with harm". He said this was a reputable professional journal and its contents should be taken seriously.

[35] Mr Tulloch had personal knowledge of empty cans being thrown over fences on to adjoining residential properties along the alley leading to Charnwood Crescent. He foresaw an increase in this behavior if a bottle shop opened nearby. Mr Tulloch said he had been asked to speak on behalf of an elderly lady who lived directly opposite the proposed bottle shop, in fact just the width of a residential street away. She was already troubled by people using her driveway to turn their vehicles and by the noise and was fearful for the future.

[36] Mr Riches wanted to know if Mr Tulloch would be reassured if Mr Limbachiya took on more staff. He agreed he would. When asked whether he thought many people would be using the shop Mr Tulloch responded that he thought they would if they were stocking up for a party. He agreed that pre loading was a different issue. Mr Riches pointed out that in none of the objections was there any evidence of litter being an issue. Mr Tulloch did not agree and suggested that other submitters would address this. To the Inspector Mr Tulloch agreed that he had not objected to other alcohol licences such as the renewals for the two premises about a kilometre away. However he considered that his action was aimed at minimizing the harm. He was opposed to an additional outlet. He quoted

the definition of amenity given in the Act and said he thought an additional licence would affect the extent to which the immediate area was pleasant and agreeable. Ms Barbour for the MOH queried whether Mr Tulloch had witnessed people drinking in the parks. He responded that it did not happen at this time of the year. It was a summertime occurrence and he was concerned greater availability of alcohol would make it worse.

[37] Mr Bree gave evidence accompanied by his son Dylan aged 12. He said he was strongly opposed to the application because it would increase the problem of alcohol consumption around children in the neighbourhood. He had no objection to alcohol outlets as such but strongly opposed them in residential areas. He urged the Committee to consider the views of people trying to raise families. Dylan Bree said that he was worried a bottle store at the end of the street would lead to drunk people being around and to broken glass. He would not want to walk down to the corner shop alone. He thought the bottle shop would definitely affect the children of the neighbourhood. Mr Riches asked whether Mr Bree took his children shopping at the local supermarket which held an alcohol licence. What would be the difference? The response was that in supermarkets the alcohol was not in your face. Mr Bree thought that while much of the harm in society today might be linked to alcohol his objection was specifically to the location of this shop in a residential neighbourhood. To Ms Barbour Mr Bree confirmed that he was not opposed to the sale of alcohol in more appropriate places but he strongly opposed it in residential areas where there were children around.

[38] Mrs Manze said the Object of the Act was to minimise harm from alcohol. She could not see how that could be achieved by allowing another outlet. She said that she was already disturbed by groups of people who appeared to be party goers passing, by noise from cars and by having to pick up litter in the street. In response to Mr Riches, Mrs Manze said she did not think these people were coming from the local tavern but she did not know. To a question from Ms Barbour, Mrs Manze responded that she thought the neighbourhood was pleasant and agreeable at this time although she did have concerns about noise particularly from cars. She could not see the neighbourhood retaining its present character if greater access to alcohol led to more intoxicated people being around. She said she often picked up empty alcohol bottles in the park but could not say where they had come from. Mr Lawn, Committee Member sought

clarification on the frequency and number of bottles picked up. Mrs Manze thought she picked up bottles about every two weeks and it would be up to six at a time.

[39] Mrs King had moved into the neighbourhood after the earthquakes. She saw it as a pleasant place to live. She did not think she would have purchased a property in Trafford Street had she known there was to be a bottle store on the corner. She made the point that it would be at the entrance of a no exit street that that everyone coming home or visiting would have to pass it. She operated a business from home and did not want her clients having to pass a bottle shop to visit her. She was concerned about the shop making it easier for people in the Charnwood Crescent area to buy alcohol and for people in the park. She said there were sports events on there all the time. She had seen litter for herself and was concerned about noisy cars. She was concerned the situation would deteriorate with easier access to alcohol. Mr Riches put to Mrs King that her concerns about behavior in Charnwood Crescent had nothing to do with the proposed bottle shop. She agreed but repeated that she was concerned about a deterioration. Sergeant Harris wanted to know if Mrs King had concerns about other lower socio economic areas in the neighbourhood. She responded that she just did not want to see Trafford Street being reduced in amenity. She thought that if the bottle store was permitted a number of owner occupied homes would become rental properties over time thus changing the nature of the neighbourhood which was largely owner occupied at present. She was convinced that amenity would be reduced by more than a minor amount.

[40] Mr Fussell had put in extensive written submissions and spoke briefly to them. As a long time resident of Trafford Street he could attest to its special character as a pleasant and agreeable place to live. He thought that the fact that so many people had turned up at the hearing despite the foul weather spoke much for the closeness of the community. He recounted turning out in the night when the corner dairy had been the target of robberies. He said other neighbours had joined him in their night attire chasing offenders. He feared that a bottle shop would attract crime. He was concerned that Mr Limbachiya would be alone in the shop much of the time and if an incident occurred it would be neighbours who would have to respond given the likely Police response time. Mr Riches queried whether Mr Fussell was concerned that Mr Limbachiya might intend competing with other bottle stores in hours of opening. Was he aware that the proposal was

that the shop would not be open longer than Henry's down the road? Mr Fussell thought that once established there was a possibility that Mr Limbachiya could seek longer hours. He repeated that he was not opposed to alcohol as such but to its abuse and the type of people who might visit the bottle store.

[41] Mr Wynne gave evidence that during his morning walks he frequently went through Nunweek Park and saw evidence by way of bottles and other litter of people drinking in the park. He thought this was particularly prevalent after there had been sports events in the park. He also wanted to advise the hearing that a new educational facility had opened in the other two vacant shops in the shopping centre. This was only in the present week. He did not think it was compatible with an alcohol outlet. Mr Riches challenged Mr Wynne that he was exaggerating the number of bottles and amount of litter he encountered on his daily walks. Mr Wynne denied this. He said it was a frequent occurrence particularly in the summer months. He could not say what proportion were alcohol bottles as it was not his practice to pick them up.

[42] Mr Burlton could not see the point in establishing another bottle shop if it did not increase the sale of alcohol. He saw a difference between a store among houses and a store in a big shopping centre. He thought this shop would be out of place. He said we should not be putting at risk the good environment that has been created. He pointed out that residents of the area came from a wide range of society and were all ages from children to the elderly. He was concerned that children regularly passing a bottle store would over time come to normalize alcohol in society. He was also concerned about the potential for increased crime. Bottle stores were known to be targets for criminals. Mr Riches observed that the applicant did not need to increase the sale of alcohol overall to make a living. He could do so by taking business off competitors. Mr Burlton disagreed saying that if more products were available it would serve to increase sales.

[43] Mr Donaldson spoke of the pleasant and agreeable neighbourhood he presently enjoyed. He said it was a wonderful community and he wanted it to stay that way. He said that if the bottle store went ahead he would be reluctant to allow his visiting grandchildren to wander alone in the area. He confirmed that on regular walks he frequently picked up empty alcohol bottles. In summary he did not want to see his present quality of life threatened. Mr Donaldson acknowledged to Mr Riches that alcohol was widely available and that persons

who wished to consume it in the neighbourhood did not have to buy it locally. However his concern was for the isolated nature of the proposed shop. He thought the fact that the applicant intended to run the store largely by himself raised the risk of him being targeted by criminals. Sergeant Harris asked Mr Donaldson if he really thought the bottle shop was likely to be a target for crime. He replied that craft shops do not often get ram raided but dairies and alcohol shops did. Mr Lawn, Committee Member, sought clarification from Mr Donaldson about lighting in the shopping block. He said in reply that there had never been lighting down the side or at the back. Mr Riches wanted to know if additional lighting was installed would that deal with his concerns. Mr Donaldson responded that it might alleviate them but would not eliminate them.

[44] Mrs Bree wanted to say something as a mother. She was concerned about the welfare of every single child. She did not understand why this bottle store should be placed in this family neighbourhood. Why should the community be put at risk so that one person from out of the area can sell alcohol? She was not opposed to alcohol as such but just thought this was the wrong location for a shop.

FURTHER EVIDENCE FROM APPLICANT AND CROSS EXAMINATION

[45] Mr Limbachiya was recalled to clarify some points. With respect to uncertainty about the franchise arrangement he said that Liquor Centre would admit smaller shops to the group if there was no other Liquor Centre nearby. He had a conversation with the franchise representative and had been told that Liquor Centre wanted an outlet in this area. The representative had said he would come and have a look at the shop as soon as an alcohol licence was granted. Mr Limbachiya said he would be happy to accept a condition of the licence that he only enter into a franchise arrangement with Liquor Centre.

[46] To the Inspector he confirmed that he had no intention of entering into a franchise arrangement with any other group. When pressed as to what he would do if Liquor Centre did refuse him Mr Limbachiya said he would consider Bottle O which had similar policies and conditions in that unlikely event. With respect to hours he said he would agree to Sunday to Thursday 8 pm closing with 9 pm on Fridays and Saturdays. He also agreed to installing a mesh grill on the window and door and would look at improving the lighting.

[47] Mr Lawn, Committee Member sought clarification as to whether Mr Limbachiya had any documentation to confirm that Liquor Centre would back him. He agreed there was none. Mr Lawn also queried whether Mr Limbachiya could give an undertaking that he would improve exterior lighting. Had he discussed this with the landlord? The reply was that he had not and he agreed that he could not give an undertaking beyond that he would look into it. Mr Rogers, Committee Member asked whether there had been an on site meeting with the Liquor Centre representative at Trafford Street. Mr Limbachiya responded that there had not been a meeting at Trafford Street just a discussion which took place at his present place of employment. The representative had given no undertakings. Mr Wilson, Chairperson wanted to know whether Mr Limbachiya had considered getting a Liquor Centre person to attend this hearing. The reply was that Mr Limbachiya had not had time to arrange this.

CLOSING STATEMENTS

[48] Mr Riches, the Inspector, the NZ Police, the representative of the Medical Officer of Health and several of the objectors took the opportunity to make brief oral closing submissions which highlighted points of evidence given. The Chairperson then thanked Mr Riches for his assistance and patience with the Committee's wish to give objectors as much freedom as possible in their evidence. The Agencies had provided their usual valuable assistance. In closing the Chairperson said that the Committee had been impressed by the way the community had come together in opposition to the application. Despite the bad weather a large number of people had been present on both days. The quality of submissions from the objectors had been high and for the most part consisted of evidence the Committee could take into account rather than just speculation about concerns as to what might happen if the licence was granted. He congratulated them all.

The decision was reserved.

DISCUSSION

[49] We are dealing with an application for an Off-Licence for a small bottle store in an equally small row of shops in a predominantly residential area. Neither the Inspector, the NZ Police or the Medical Officer of Health have raised any opposition to the granting of the licence. There has however been considerable opposition from local residents who argue that the granting of the licence would reduce the amenity and good order of the neighbourhood by more than a minor extent.

[50] Our attention has been drawn to the decision of the then Liquor Licensing Authority in *British Isles Inn Ltd NZLLA PH 406/2006* where the Authority stated

“Although the onus is on the company to establish its suitability, there is a reasonably high threshold to be met by the objectors in order to displace the absence of concerns by the reporting agencies. We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an applicant is unsuitable”

Those comments were directed to the issue of suitability and pre date the present Act. While we accept they have some relevance to the matter of amenity and good order, the 2012 Act makes a specific provision for the Committee to form its own opinion on that subject. It provides criteria to assist it in doing so.

It follows that the Committee cannot ignore public objections simply because the Agencies have not raised any opposition to the granting of the licence. However we have to be able to identify facts that are directly relevant from the mass of material presented. As the Alcohol Regulatory and Licensing Authority said in *Mangere-Otahuhu Local Board v Level Eighteen Ltd [2014] NZARLA PH 627-228*

“The decision of the DLC must be based upon some material that tends logically to show the existence of facts consistent with the finding and that the reasoning is supportive of the finding. The reasoning of the DLC and the inferences drawn from the facts, need to be logically available to the DLC.”

The objectors provided us with a wealth of material in their submissions. Some of this material, as counsel for the applicant termed it, more concerning “the evils of alcohol” rather than the likely effects of the granting of this application. Some were expressions of more speculative concern about the possible effect on the neighbourhood. Nevertheless among this material there was good evidence which the Committee could take into account and which was spoken to by those who were subject to examination before us.

[51] We therefore proceed to evaluate the evidence presented using the approach outlined by the High Court in *Otara-Papatoetoe Local Board v Joban Enterprises Limited* CIV 2011=404-007930 [2012] NZHC 1406.

[31] ... the Authority is required to undertake an evaluative exercise. An appropriate framework would involve in no particular order consideration of:

(a) the criteria set out in s35 (1);

(b) the reports presented by the Police and Inspector...,

(c) Public objections...,

Having considered all of that information, the Authority must stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires the Authority to form a view on whether there is evidence to suggest that granting the application will be contrary to s 4 (1), increase the risk of alcohol abuse. While a causal nexus is required between such evidence and the relevant risk, it is unnecessary to qualify the nature of the link by reference to such words as ‘powerful’ or ‘direct’.

We are mindful however that arising from this exercise we are obliged to form an opinion. Discussing this in *Venus NZ Ltd* CIV 2014-419-420 [2015] NZHC 1377 Heath J said

First, s105(1)(h) and (i) of the 2012 Act, both of which deal with “amenity and good order” considerations, requires the Authority to form an “opinion”. The need for a judicial body to form an independent opinion is conceptually different from a decision that is based on whether or not an applicant has established on a balance of probabilities that a relevant fact has been proved.

[51] Turning first to s105(1) (a) the object of the Act. 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.

[52] s105(1)(b) the suitability of the applicant. No one has raised any questions about the suitability of the applicant in respect of the popular use of that term. As far as we can ascertain he is a young man of good character, who is hard working, anxious to succeed in business and thereby contribute to society, and who has some years experience in the industry. Suitability in the context of the Sale and Supply of Alcohol Act however has wider connotations. A number of witnesses queried aspects of the applicant's business plan especially from whence he expected to get his customers. The underlying concern was that if the business failed to attract the purchasers of high end products as the applicant aimed to do, then he might resort to price cutting on products which might attract an undesirable element to the area. Witnesses also raised concerns about the adequacy of staff levels leading to safety concerns. We will say more on this later in the decision but for now it gave rise to a possibility of inadequate planning. This was echoed in evidence relating to the negotiations for a franchise agreement. We were left with the view that very little had actually been done. Similar concerns were raised with respect to the physical security of the shop, lighting issues and the like. The impression we were left with was that the applicant had not thought through his business proposal. We were disappointed he had not progressed many of the matters which a more experienced applicant might have foreseen could become issues. These are matters which in some degree relate to his suitability to hold a licence.

[53] s105(1)(c) any relevant local alcohol policy. Christchurch has no Local Alcohol Policy and we were at pains to point out to the Objectors that we could not take account of speculation as to what it might contain when it is eventually adopted. We note however as a Committee that it would have been very helpful to us had the Council been able to direct us on some of the issues.

[54] s105[1](d) the days on which and the hours during which the applicant proposes to sell alcohol. The applicant originally proposed days and hours which were totally consistent to those commonly pertaining in the industry and with those of existing Off-Licences in the vicinity. Under cross examination however he agreed to a reduction in hours to meet community concerns not only about the attraction of undesirable elements to the store but also about the safety of employees and those members of the public who might become involved in an incident. Various closing hours were discussed but by the end of the hearing Mr Limbachiya said he would be agreeable to closing at 8 pm Sunday to Thursday and 9 pm on Friday and Saturday. We wonder whether closing at an earlier hour than competitors is realistic. Although that is a matter for the applicant we note the concerns of one objector who pointed out that once the licence was granted it was open to the holder to seek a variation to the conditions at a later point when public awareness may be less.

[55] s105(c) the design and layout of any proposed premises. There were no specific objections raised under this heading but objectors did point out the small size of the shop. This was in the connection that it is only about half the size of premises which the potential franchise holder Liquor Centre usually required. The implication of this is that if Mr Limbachiya is not successful in entering into an agreement with Liquor Centre then he might seek to become associated with a franchise whose policies and marketing practices were not nearly so desirable. Concern was raised in evidence about poor lighting and the intentions of the applicant with respect to external security doors. By the end of the hearing we had an undertaking from Mr Limbachiya that he would install a mesh type of roller door which would have a better appearance and would be more resistant to graffiti. He had to admit however that he could not give an undertaking about improving external lighting as that would require the landlord's approval and that had not been sought.

[56] s105(1)(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.; and
s105(1)(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.

The only product the applicant proposes to sell outside this list is cigarettes and tobacco. No opposition is raised by the Agencies although it is noted that the proportion of tobacco to alcohol sales will be the subject of monitoring. Several public objectors however drew attention to the incidence of robberies of liquor stores where not only alcohol but also cigarettes are a target. They cited instances of ram raids and the like on Off-Licence premises and were concerned that not only did this put shop staff at risk but also neighbours who might witness the event or otherwise become involved. While the incidence might be low given the number of licenced premises across the city, we have to acknowledge that their concern has some weight.

[57] s105(1)(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence. With respect to amenity we heard much evidence that Trafford Street and its immediate environs was a pleasant and agreeable place to live. We were able to observe during the hearing the demeanour of the objectors and other members of the public who attended and were impressed with what seemed to be evidence of a tight knit community. However we were told of some concerns about undesirable developments. Objectors who were in the habit of taking regular walks gave evidence of seeing and in some cases picking up litter and empty bottles left behind by people drinking in the local parks and elsewhere. We acknowledge that the Inspector saw no such litter during her visit to the area but we accept unequivocally the evidence of the locals that from time to time it is an issue. We heard also that there is already a problem with vehicles creating noise both when accessing the existing shops and when trying to undertake a turn, often into private driveways, to exit Trafford Street. Some reported noise from people walking on the street who may have been going to or leaving parties. Objectors felt that the presence of a bottle stop where alcohol could be easily accessed would likely add to these problems. We accept that argument.

We were also told of fears about a decline in good order. Evidence was given that an increase in crime was likely because criminals might see an isolated bottle store staffed by one person for the most part as a soft target. In the event of an incident local people were likely to be first on hand and to be placed at risk. We also heard concerns about what might happen if the proposed franchise arrangements did not eventuate or if business did not reach expectations and price cutting became the way to increase sales. In the event of the latter it is likely that less

desirable customers would be visiting the shop. The evidence of Sergeant Harris was that these fears may be exaggerated but nevertheless they resonated with us.

[58] s106 of the Act requires us, when considering the effects of the issue of a licence on the amenity and good order of a locality to have regard to-

(a) the following matters (as they relate to the locality):

(i) current and possible future, noise levels:

(ii) current, and possible future, levels of nuisance and vandalism:

(iii) the number of premises for which licences of the kind concerned are already held; and

(b) the extent to which the following purposes are compatible:

(i) the purposes for which land near the premises concerned is used;

(ii) the purposes for which those premises will be used if the licence is issued.

We heard evidence of existing noise levels, mostly from vehicles, which some residents found disturbing. We also heard evidence of existing levels of nuisance and vandalism. Our view is that existing levels are probably no different from those experienced in other residential areas. Nevertheless we have no difficulty in accepting that the introduction of a bottle store into this neighbourhood is likely to increase the levels of both.

[59] It is when we come to consider the compatibility of the current land use with those of the proposed premises that all we have been told in the submissions and in sworn evidence comes together. This is a residential neighbourhood which is pleasant and agreeable to live in. We were told that by everyone who addressed us and we have confirmed it by our own observations. It is a neighbourhood which is characterised by the cross section of people who live there. We heard evidence from young and old, from a child, through families, to retired folk and to quite elderly people. All stressed that it is a good place to live now and their fears for what even the smallest reduction in amenity and good order could bring to their lifestyles. The question we must answer is whether this bottle store is compatible with the residential nature of the surrounding area. We must form our own opinion on that based on what we have heard as stated by Heath J in *Venus* already referred to above. We do not believe it is compatible.

[60] s105(1)(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that- (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but (ii) it is nevertheless desirable not to issue any further licences.

This section was not addressed other than in passing during the hearing and we do not believe there are issues here we need to take into account.

[61] s105(1)(j) whether the applicant has appropriate systems, staff, and training to comply with the law. We heard nothing that would suggest that Mr Limbachiya would be unlikely to comply with the law. We did hear concerns expressed about the very limited staffing proposed but that was in respect of increasing the risk of criminal activity by others.

[62] s105(1)(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103. We record that there were no such matters raised in reports. We acknowledge the assistance of the Agencies with respect to the information in their reports and the evidence given. None of the Agencies found any reason to oppose the granting of the licence. However we also note it is for the Committee to assess the public objections.

CONCLUSION

[63] Having considered all the criteria to which we must have regard as detailed in s105 and s106 we now step back and consider the view we have formed against the object of the Act as set out in s4:

The object of the 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 minimized.*

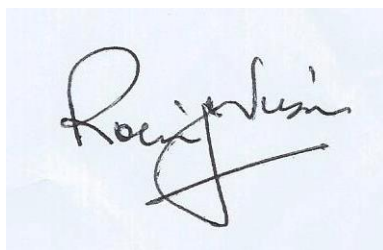
We are mindful that as the High Court said in *Joban* referred to above, when a causal nexus is established between evidence and relevant risk, it is not necessary to qualify the nature of the link by reference to such words as “powerful” or “direct”. We accept that there is a nexus between the evidence given by the

objectors about amenity and good order and other matters and the risk of unfavourable consequences for the neighbourhood if the licence is granted. The link may not be great but it does not need to be. We are required to form an opinion as to whether the amenity and good order of the locality would be reduced, by more than a minor extent, if the licence were to be granted. It is a particular neighbourhood to which we must have regard. One which has been characterised in evidence as a very pleasant and agreeable place where live in harmony and mutual support a broad cross section of society from young to old. We have formed the opinion that amenity and good order would be reduced by more than a minor amount. The foreseen reduction may not be great but it is likely to impact on the people who live in the vicinity. Returning now to the object of the Act we do not think that the granting of this licence would be consistent with the stated object and on that basis and on the evidence we heard it is our decision to refuse it.

DECISION

[64] The decision of the Committee is that the application of Samarth Rajeshkumar Limbachiya for an Off-Licence for premises to be known as Harewood Bottle Store at 2A Trafford Street, Christchurch is refused.

DATED at Christchurch this 25th day of July 2017

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
Chairperson
Christchurch District Licensing Committee