

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Riccarton Wines & Spirits for an Off-Licence pursuant to s.99 of the Act in respect to premises situated at 334 Riccarton Road, CHRISTCHURCH.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE:

Chairman : Mr G B Buchanan
Members: Mr D Blackwell QSM
Mr R Wilson JP

HEARING at the Christchurch City Council Chambers, CHRISTCHURCH on the 23rd May 2017.

APPEARANCES

Ms A Lavery; Christchurch City Council Licensing Inspector
Constable G Craddock for NZ Police
Ms P Williams On Behalf of the Medical Officer of Health

Witnesses for the Inspector:

Mr T Lawson On Behalf of University of Canterbury Students Association.
Mr D Lu
Ms B Symon

Public Objector

Mr M Wells

APPLICANT

Mr Z Shu
Mr P Egden appearing for the applicant

Ms G Rhodes on behalf of the Liquorland Group.

Introduction

[1] This decision relates to an application for an Off Licence under section 99 of the Sale and Supply of Alcohol Act 2012 to operate a bottle store.

[2] This application relates to the premises situated at 334 Riccarton Road, Christchurch. This is currently a vacant shop and has not previously been licensed.

Background

[3] The applicant currently operates an Off-Licence in another area of Christchurch. He has done so for 8 years.

[4] The premise that the applicant wishes to operate from at 334 Riccarton Road is a vacant shop close to the Bush Inn Shopping complex.

[5] There are a number of existing On and Off licences in this area. As well as being a shopping area with two supermarkets, it has recently become popular for dining, with an increase in the number of restaurants in the immediate area.

[6] The Licensing Inspector objects to this application. The Committee has also received an objection from the community. Police and the Medical Officer of Health do not object to the application.

[7] A hearing was set to determine the matter.

The Applicant

[8] Mr Shu is the applicant for the licence. He was represented by Mr Egden.

[9] Mr Shu's evidence was that he and his wife were the sole directors and shareholders of the applicant company. They had operated a successful bottle store in Barrington for 8 years. He noted in his evidence that his suitability was not raised as an issue by any of the agencies.

[10] He told the committee that he had developed a market selling high end wines to the local Asian community. He ran wine education evenings and was now looking to locate a wine shop closer to this market. The greater concentration of the Asian community lived and shopped around the Bush Inn area. He also said that he would be able to sell to the growing Chinese tourist market who visit restaurants in the area in buses.

[11] Mr Shu said that high end wine sales would be his focus at this premises.

[12] The store location has a large volume of traffic going past every day.

[13] Mr Shu said he did not think that the presence of an additional Off Licence in the area would be a problem to the good order of the community. He said that there were already two supermarkets that sold cheaper wines and beer and that this was not the focus of his proposed business. The three other Off Licences in the area are very small stores that do not have alcohol sales as their primary

business. They did not have much of a range of products and he did not consider that they were competing for the same market share.

[14] Mr Shu said that the premises could not be accessed directly from the BP Service Station as there was a large 5 metre block wall separating the two buildings and a low barrier between the two car parking areas. Pedestrian access was by walking along the footpath between the two properties.

[15] He also gave evidence that he understood that the Liquor King Bottle Store that currently operated approximately 85 meters from his proposed store was about to move into temporary accommodation as the current building was to be demolished. He did not think that they had agreed to return to the new building upon completion.

[16] Mr Shu said that they would not contribute to any current problems in relation to student behaviour as they will focus on wine sales and not on RTD sales. There may be an occasional requirement by the franchisor, Liquorland to have such a focus but that would be intermittent. RTDs will only be kept in the chiller and not on the floor.

[17] Mr Shu expected that in the first year, sales to Asian customers would be about 25% of his total sales and after that about 50% of sales to be from these customers. He would continue to export wines to China as he does now.

[18] In Cross Examination by Ms Lavery, Mr Shu said that Liquorland did not control the prices at the store and that this only happened during special promotions which were organised by the franchisor. In his existing store for example, he had about 2500 individual items for sale and his current franchisor, Super Liquor, would only control the price of about 300 of those.

[19] He told Ms Lavery that he did look at other premises for a bottle store but none were suitable, nor available.

[20] Mr Shu denied that he was looking to sell the store as soon as he had a licence and offered to give an undertaking to the committee that he would not sell it for a number of years. He said that he had been in discussions with Mr Hardeep and Ms Symon who knew about what he was doing but did not offer to sell his new business to them. They had some discussions about buying one of their premises which did not work out.

[21] Mr Shu told the committee that he did not think that there would be a price war between the off licences. He said that he would not reduce his prices on RTDs etc but would continue to focus on wine sales. He did not think that he would be in competition with other off Licences in the area.

[22] Asked what size chiller he was intending to put into the new store, Mr Shu said it was about 50 square meters. He accepted it was a large chiller and would be used mostly for RTDs and Beer.

[23] Ms Lavery asked if customers who would have normally gone to Liquor King for their alcohol then started going to Mr Shu's store, did he think that Liquor King would discount alcohol to regain those customers. Mr Shu said they would not worry about reduction in sales as they focused on their 'line products'. He did not accept that either he or other alcohol outlets would discount their products to increase market share.

[24] When asked if Liquorland would determine the products and pricing in his store, Mr Shu said that would apply to only a very small number of products. Most of the other products that he sold would be determined by him, as he did in his current store.

[25] In answer to a question from Mr Blackwell, Mr Shu said that of the 3000 items in his current store only about 300 of those were price controlled by the franchisor. The rest he was able to price as he saw fit.

[26] Mr Shu agreed in answer to a question from the committee that, irrespective of how well his wines sales went, the majority of his sales would be beer, cider and RTDs.

Evidence of Gregory Bryan Rhodes

[27] Mr Rhodes is the South Island Manager for Liquorland. He has considerable experience in the industry. He said that the applicant had approached the franchise and had made an application to join Liquorland. Liquorland has agreed to accept his application if the application for the Off Licence is successful

[28] He said that Liquorland does not engage in price wars and does not advertise in TV or Newspapers. He also said that they do not target the younger drinker.

[29] He did not think that there was an excess of Off Licences in the area and that his own franchise had been looking to go into the area before being approached by the applicant.

[30] Mr Rhodes presented a plan of the upcoming development at the Bush Inn. He said that although it did have a store identified as a Bottle Store, he thought it unlikely that Liquor King would return. He said it was not suitable as there was no real parking and was too small. He understood that Liquor King had not signed a contract to occupy the new site.

[31] Mr Rhodes said that there were other areas in Christchurch with a higher density of Off Licences and bottle stores than around the Bush Inn and he did not see a problem with this current application. He did not think that it would greatly affect the other existing stores.

[32] To a question from Ms Lavery, he said that he did not actually know if Liquor King was going back or not but his information was that they had not yet signed a tenancy agreement.

[33] When asked about the possibility of noise and disorder around the vicinity of the proposed Bottle Store, he did not think that there would be any.

[34] Mr Rhodes said that under the terms of the franchise agreement, 85% of the stock in the proposed bottle store must be supplied by Liquorland and that 45 of those items were 'key' items which accounted for the majority of the turnover in a similar bottle store. He also said that for Liquor King 38% of sales would be RTD sales, 32% would be spirits sales and only 10% would be wine sales. The Liquorland franchise would expect to have a greater percentage of wine sales, as this was more of a focus for them.

[35] To a question from the Committee Mr Rhodes said that there was a Liquorland bottle store with about 50% wine sales, but that was because of high sales into restaurants.

[36] Mr Rhodes was shown several photographs which advertise alcohol at a Liquorland store. The advertising was targeting students, offering student discount with ID. When asked about this advertising, he said that it was a marketing strategy by a particular store and was not supported by Liquorland. It had been withdrawn by the advertiser on the advice of Liquorland and the Medical Officer of Health.

Licensing Inspector

[37] The Inspector gave evidence to the Committee stating that she had two concerns regarding this application. Firstly, the proximity to the existing bottle store, Liquor King which was approximately 85 meters from this proposed store. Secondly, that it was close to a service station, and the legislation sought to prevent the possibility of a 'one stop' shopping experience to purchase both petrol and alcohol.

[38] Ms Lavery had spoken to other bottle stores in the vicinity to establish their attitude to the application. She also made enquiries confirming that Liquor King was returning to the new building after it was completed.

[39] Ms Lavery said that another bottle store in the vicinity, particularly close to an existing one would cause a price war. She was concerned that students, who make up a substantial number of potential customers in this area, were price driven and already had problems with excessive alcohol consumption.

[40] To questions from Mr Egden, Ms Lavery accepted that the service station was not on the same premises as the bottle store and could not easily be reached by driving a car between the two premises. One would have to drive over the footpath or onto the road to do so. It is possible to walk between the two premises. Ms Lavery said it would have been remiss of her not to have identified this concern to the licensing Committee.

[41] Ms Lavery agreed with the point made by Mr Egden that there were other areas in Christchurch that had a higher number of alcohol outlets than the area around the Bush Inn.

[42] To a question from the Committee, Ms Lavery said that the proximity of the proposed bottle store was her main concern and if it were 300 meters further away, or more, then she would not be so concerned.

Ms Symon

[43] Ms Symon is the owner of a Liquor King store in Waimairi Road. She gave evidence that she had several discussions with the applicant and because of that believed that the applicant would sell the business as soon as it had a licence. She said that having another bottle store nearby would affect her business.

[44] To a question from Ms Lavery, Ms Symon said that she thought there may be a pricing war and said that she would lower her price to keep her market share. Her shop has a strong local clientele, but the student business was an important part of her business.

Mr Lu

[45] Mr Lu gave evidence that he was the owner of a souvenir store that also sold a small amount of wine and beer. He had met the applicant through his accountant and had not previously purchased alcohol from the applicant except in a private capacity.

Mr Lawson

[46] Mr Lawson gave evidence that as the food and beverage manager at the Canterbury University Students' Association he had strong concerns about the addition of another bottle store in the area. Preloading was a significant issue for him and his staff. Some students are heavily intoxicated and are refused entry into the Foundry Bar at the University. He also liaises with the neighbours and discussed some of their concerns regarding damage and the behaviour of intoxicated students.

[47] An additional bottle store will inevitably cause the price of alcohol to reduce further in the area, creating a greater risk of over consumption. He said that there would be a price war if another store came into the area. He gave an example of a similar situation in Papanui where the price of some RTD's reduced substantially.

[48] In talking to students, Mr Lawson said he was aware that they are purchasing most of their alcohol from the immediate area.

Police

[49] Police did not object to the application.

Canterbury Medical Officer of Health

[50] Ms Williams did not oppose the application but made the point that the applicant had substantially changed the nature of his application by now looking to have a Liquorland franchise, rather than an independent Wine and Spirits Store

Community Objectors

Mr Wells

[51] Mr Wells gave evidence that he was a pastor at a local Church. He worked with youth in the area and had been a supervisor at an Otago University Hall of Residence and had worked in a Bottle Store. He felt he had experience of student culture. He expressed concern that another bottle store in the area would add to the harm that was already being done. He felt that an additional bottle store would cause a price war. He also felt that it would give students an ability to shop around if they were refused service from one store. Students have enough access to alcohol already.

[52] To a question from the Committee Mr Wells said that students would always go the store that had the cheapest price, even though it might be further away from where they were.

Submissions

[53] The Licensing Inspector presented written submissions to the committee

[54] The applicant also made written submissions.

Decision

[55] All evidence presented to the committee was considered.

[56] There is no Local Alcohol Policy in place for Christchurch City.

[57] In considering the application for an Off-Licence the committee must have regard to Section 105 and 106 of the Act.

105 Criteria for issue of licences

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

[58] The suitability of the applicant has not been raised as an issue for this committee to consider. He operates an existing bottle store in Christchurch without issue and in fact, has a letter from the Police congratulating him on action taken at that store.

[59] The issue raised by the Licensing Inspector is that another bottle store in this location will affect amenity and good order to more than a minor extent and that an additional bottle store as close to an existing one will create a pricing war.

[60] The over-riding principle which must always be considered when assessing an application for an off-licence, is the object of the act, as established in *My Noodle Ltd v Queensland Lakes District Council* (2009) NZCA 564. More recently in *Venus New Zealand* (2015) NZHC 1377. Heath J said

“Although the “object” of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the object of the legislation. It seems to me that the test may be articulated as follows ;

Is the Authority satisfied, having considered all relevant factors set out in s105(1)-(k) of the 2012 Act, that the granting of an off-licence is consistent with the object of that Act

[61] Evidence was given that the applicant is an experienced operator of an existing bottle store. He has developed his current business to encourage members of the Asian Community to become involved in wine appreciation. He operates a wine club and his sales are targeted towards the Asian market. He advised the

Committee that he wished to locate a new business closer to that market. His Business Plan is to focus on the sale of quality wines to local and tourist Asians, projecting that 50% of his sales would be to this market.

[62] Despite the applicant's well thought-out plan, evidence from other bottle stores and his own franchisor suggest that Mr Shu is unlikely to be able to achieve the high volume of wine sales he expects. The evidence shows that around 85% of his sales will be beer and spirits based. The locality of the Bottle Store will mean that a considerable amount of these sales will be to the students that live in this community.

[63] Student behaviour in this area continues to be a problem and some concern was expressed by the Inspector and Mr Lawson that an additional bottle store may contribute to this problem. The students look for the cheapest price for their alcohol supplies.

[64] There is no evidence that people attending the bottle store will congregate around this area. There is a Liquor Ban in this area. Students and others are discouraged from having open containers of alcohol. Purchases are usually taken to people's homes for consumption.

[65] Although there are other Off-Licences in the immediate area, there is only one bottle store. There are other bottle stores further away from this location in the area of Ilam/Upper Riccarton but these are not close to the area around the Bush Inn shopping area. It cannot be said that there is a high density of alcohol Off-Licences in the area.

[66] The increase in the availability of alcohol created by an additional bottle store in this area is unlikely to affect the consumption volumes of students or others. It simply gives them a choice as to how far to travel. Assurances were given by the applicant and the franchisor that they would not be targeting students with advertising. As the focus of the business was to be wine sales they would not enter into a price war with other Off-Licences to target the student market.

[67] The close proximity to an existing bottle store was the major reason for the Inspector's objection. She accepted that her concerns would be greatly reduced if there was greater distance between the businesses. The existing bottle store, which was accepted in evidence as being 85 meters from the proposed store, is about to close and move into temporary premises. This will place it further than the current 85 meters away. Conflicting evidence was given as to whether the existing bottle store was going to return to the new premises when building was completed.. However, if it does return all that will be required at that time is a variation to the existing base licence. If they do not return, any new tenant will need to make an application for a new licence.

[68] The Committee does not believe that the proximity of the applicant premises in this instance is fatal to the application. In *Boyes Foodcentre, re (2009NZLLA440 (24 April 2009))* a license was granted for a bottle store adjacent to an existing Supermarket. In that case, the authority was satisfied that the conditions set out in the act had been met.

[69] The location of the proposed bottle store is close to an existing Service Station. The Act seeks to prevent an Off-Licence locating together with a Service Station.

Section 36

The Licensing Authority or Licensing Committee concerned must not direct that an off licence should be issued for any premises if (in its opinion)

(a) The principal business carried on there is for _

(i) the sale of automotive fuels, or

(ii) the repair and servicing of motor vehicles and the sale of automotive fuels, or

(e) they are situated (wholly or partly) within a shop ;or

(f) the public can reach them directly from the shop, or directly from the premises where the principle business carried on is a business of a kind described in paragraph (a).

[70] Evidence presented was that there was a considerable distance between the bottle store and the service station. Vehicles cannot be driven between the two premises except by driving onto the road first. Pedestrian traffic would be required to either walk onto the footpath or climb over a low barrier to walk nearly 50 meters to the bottle store. We do not think that Section 36 can apply to the location of the proposed bottle store in this instance.

[71] The Act requires that decisions by this Committee be reasonable, having regard to the object of the Act. In "Karara Holdings and others NZAR (2003) 752

"section 4 expresses a philosophy concerning the social unity of controls over the sale and supply of liquor should be administered so as to contribute to the reduction of liquor abuse in the community within the limits of their capacity to do so. The stipulation that the object of the Act is to establish a reasonable system of control reflects that legislative perception. ."

[72] The Committee finds on the evidence presented, that the applicant company is suitable to hold an Off-Licence and the application is granted.

[73] Section 119(1) of the Act will apply to these premises. The entire premise is to be designated as a Supervised Area. Minors must not be admitted to these premises unless accompanied by a parent or guardian.

[74] The Committee is satisfied as to the matters which we must have regard to as set out in s.105 of the Act and we grant the licence for a period of 1 year pursuant to s.130.

[75] The licence will not issue until all relevant clearances have been obtained. The applicant is not entitled to sell alcohol until the licence is issued. Unlicensed sales

may result in imprisonment for up to three months or a fine of \$40,000 (sec 233 (a) and (b) of the Act).

[76] The applicant's attention is drawn to s.259 of the Act which makes it an offence to fail to comply with certain requirements and restrictions imposed by or under this Act; specifically sections 46 to 63. 231(1).

[77] The applicant must comply with all conditions specified on the licence.

[78] The licence will be subject to the following conditions and all other conditions as identified on the licence.

[79] The licence may be issued on payment of the annual fee payable in accordance with regulation 15 of the Sale and Supply of Alcohol (fees) Regulations 2013.

Compulsory conditions

The following conditions are compulsory:

(a) No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day.

(c) Alcohol may only be sold or delivered on the following days and during the following hours:

Monday to Sunday 9.00am to 10.00pm

(d) Water must be freely available to customers, while alcohol is being supplied free as a sample on the premises.

(e) The whole of the premises is designated as: Supervised

Discretionary conditions

The following are discretionary conditions:

(a) the following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:

- 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 on sales to intoxicated persons
- Display copy of Alcohol Ban Map for local area.

(b) the following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:

- Alcohol must only be **sold and supplied** on the premises in accordance with the premises plan submitted with the application.

(c) the following steps must be taken to promote the responsible consumption of alcohol:

- The licensee must implement and maintain the steps proposed in their host responsibility policy aimed at promoting the reasonable consumption of alcohol.

Conditions applying to all remote sales for the sale and supply of alcohol:

- (a) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on every receipt issued for any alcohol sold via the internet site:**
- (b) The licence holders name, the licence number, and the date on which the licence expires.**
- (c) A copy of the licence or a clearly identified link to such an image must be displayed in a prominent place on the internet site.**
- (d) The following steps must be taken to verify that people are over the purchase age:**
 - (i) In the case of an order made using an internet site, telephone order, or physical order – the prospective buyer must declare that he or she is 18 years of age or over (and where the prospective receiver is involved that the prospective receiver is also 18 years of age or over)**
 - (i) Once when the prospective buyer first commences the order process; and**
 - (ii) Again, immediately before the sale of alcohol is complete**

Other restrictions and requirements to be noted on the licence

I recommend the following restrictions and requirements are noted on the licence:

Section 56 – Display of signs

Section 57 – Display of licences

Section 59 - Requirements relating to remote sales by holders of off-licences

Section 212 – Manager to be on duty at all times and responsible for compliance.

THE LICENSED PREMISES

The premises are identified on the plan provided with the application for a licence.



Mr G Buchanan
Chairman