

Decision Number 60D [2019] 0165

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

AND

IN THE MATTER OF an application by Mrs Nicky Oram on
behalf of the Cathedral Grammar
School Friends Group for a Special
Licence pursuant to s.138 of the Sale
and Supply of Alcohol Act 2012 in
respect of premises situated at, **2
Chester Street, Christchurch**, known
as **Cathedral Grammar School**.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson : Ms C E Robinson
Members: Mr R Wilson JP
Mr P Rogers

DECISION ON APPLICATION FOR SPECIAL LICENCE

[1] This is an application by the Cathedral Grammar School Friends Group ('the applicant') for a Special Licence under s138 of the Sale and Supply of Alcohol Act 2012 ('the Act') in respect of premises situated at 2 Chester Street, Christchurch, known as Cathedral Grammar School.

[2] The event is described in the application as a 'Back to school BBQ'. The number of people attending is said to be less than 150. Those attending are children, parents and teaching staff of the school. The event is being organised by the 'Friends of the School' committee ('the committee'), who are essentially the school 'PTA'. The application identified a committee member, Mrs Fran Pashby as the Licensee. Mrs Pashby is the member of the

committee who prepared the application. However, she did not appear at the hearing. The committee was represented by Mrs Nicky Oram, who is the president of the committee.

[3] We raised a preliminary concern about who is the Licensee for the purposes of the application. It was not clear to us whether or not the committee was authorised to hold a special licence for the purposes of s28 of the Act. In the end Mrs Oram confirmed she would hold the licence. This was not opposed by any party. We proceeded on that basis.

[4] The applicant has experience running similar events and has requested an exemption from the requirement to provide a qualified duty manager for the event pursuant to s213(1) of the Act. The applicant has nominated a parent, Mr John Luhrs, to manage the sale and supply of alcohol. We were told that Mr Luhrs has experience running a bar at similar events for the Cathedral Choristers without issue. No issues of concern regarding his suitability were raised by any party.

[5] The NZ Police did not raise any opposition to the application. Senior Constable Logan Steele attended the hearing on behalf of the Police to assist if required.

[6] The Medical Officer of Health has opposed the application on the grounds that the event is a 'child focused event' where, in its opinion the sale and supply of alcohol is inappropriate due to the likelihood of alcohol related harm from the normalising of alcohol consumption.

[7] A hearing of the application took place on 22nd February 2019. The hearing was attended by Mrs Oram and Dr Byron Oram on behalf of the applicant, Ms Helen Barbour and Dr Alistair Humphrey for the Medical Officer of Health (MOH). Licensing Inspector Martin Ferguson also appeared.

[8] With the agreement of the parties we first heard from the MOH. Dr Humphrey gave evidence as to his concerns about the inappropriateness of the sale, supply and consumption of alcohol at a child focused event. In support of his concern Dr Humphrey referred to a body of literature that showed a link between exposure of children to adults consuming alcohol of any quantity and alcohol related harm.¹ He emphasised that the literature showed that this was not just linked to excessive consumption and not confined to lower socio-economic groups. We have read the literature provided to us. We note that

¹ Brief of Evidence Dr Alistair Humphrey Medical Officer of Health, 17 January 2019 and appendices in Exhibit AH 1

the findings in the research provided were not disputed by the applicant or the Inspector. We accept that there is evidence that exposure of children to the consumption of alcohol in social settings does normalise alcohol consumption and may indirectly cause alcohol related harm.

[9] Dr Humphrey concluded in reliance on the evidence of harm that the sale, supply and consumption of alcohol at this event is 'inappropriate' and contrary to the object of the Act. We return to the object to the Act in our evaluation.

[10] Dr Humphrey urged us decline the application so that the children of Cathedral Grammar School could experience an event without alcohol present. He was strongly of the view that 'schools should be a sanctuary'. Dr Humphrey referred to correspondence from the Ministry of Education that provided a recommendation that alcohol should only be at adult only fundraisers. That recommendation, however, acknowledged that it was a matter for individual School Boards.² Dr Humphrey told us that of the more than 240 primary and secondary Schools in Canterbury almost all of them have heeded the Ministry of Education's advice and have not applied for alcohol licenses for child-focussed events.

[11] Dr Humphrey submitted that we should apply a precautionary approach.³ Dr Humphrey agreed there were no concerns that the event could not be run safely and responsibly and that it was unlikely there would be anyone intoxicated at the event. Dr Humphrey made a number of submissions about legal rights of children and rights to the consumption of alcohol which Mr Ferguson challenged him on. We do not think this is the place to resolve those arguments. We did not have the benefit of legal argument on that issue.

[12] Dr and Mrs Oram spoke on behalf of the applicant. They explained that although the application document described the event as being 'primarily for children', that was not strictly correct. Dr Oram, who has been a parent at the school over the last 4 years and attended previous events, explained that it was a broader school community event which provided an opportunity for parents to reconnect at the beginning of the school year. He accepted that it provided entertainment for children, but it had a wider purpose.

[13] In answer to questions Mrs Oram explained how the application came about, she acknowledged that it had been rushed and prepared by a committee member who was

² Exhibit AH1 page 154

³ *The Medical Officer of Health v Lion Liquor Retailing Ltd* [2018] NZHC 1123

inexperienced. She explained that the committee was independent of the Board, although the School Principal attended the committee meetings. The application was prepared largely along the lines of earlier applications which had been granted and were undertaken without incident.

[14] The event is only for a two and half-hour duration. Mrs Oram explained that the bar area is some 50m from the children's entertainment area, although, there is an adult mingling area in between where alcohol was likely to be consumed. Mrs Oram explained that the bar area had deliberately been located away from the children's entertainment area in response to past opposition from the MOH.

[15] Mrs Oram answered questions from the District Licensing Committee about alcohol management and, although she acknowledged her inexperience, satisfied us that she was sufficiently aware of some signs of intoxication such that, given the limited duration of the event, she could respond appropriately. We were further comforted by the detailed Alcohol Management Plan that had been in place for previous events and would be followed at this event. Although clearly not as knowledgeable as a qualified duty manager, given the nature and scale of the event, we are satisfied that she had sufficient common sense to ensure that the short event is run safely and responsibly.

[16] Inspector Martin Ferguson produced his report which addressed the matters to which regard is to be had in section 142 of the Act.⁴ The Inspector recommended the grant of the special licence for the event subject to conditions. Mr Ferguson had not met or interviewed members of the applicant committee or Mr Luhrs. He admitted to taking a lenient approach on the basis of resourcing, but also in reliance on past experience. Mr Ferguson has over 20 years' experience as a licensing inspector and although his judgment is based on many thousands of applications over the years, it is still important that inquiries are made about the experience of unqualified individuals who are taking front line responsibility for the sale and supply of alcohol when an exemption is sought under s213 of the Act. We do note that there were no issues raised by the Police.

[17] Ms Barbour made brief submissions emphasising the child focused nature of the event and on the basis of the evidence provided by Dr Humphrey she submitted that granting the application was contrary to the object of the Act.

⁴ Inspectors Report, Martin Ferguson, 17 December 2018.

[18] Mr Ferguson made submissions about the purpose and object of the Act, he was of the view that the references in the Act to “excessive or inappropriate” consumption of alcohol were linked and that ‘inappropriate’ consumption of alcohol was related to how alcohol was consumed, such as drinking games and the like. He did, however, accept that what was ‘inappropriate’ was related to context. Mr Ferguson supported his position by referring to the introductory speeches from the Hon. Simon Power and the Hon. Judith Collins when the legislation was introduced to parliament. Both had referenced the need to address the excessive drinking culture. He submitted it went beyond the object of the Act to determine that all applications for the sale and supply of alcohol when children are present should be declined. Neither the Inspector nor the MOH were able to offer any case law about what was meant by ‘inappropriate’.

[19] Mrs Oram submitted that the application should be granted.

Section 142 Evaluation

[20] Section 142 of the Act sets out the criteria for determining an application for a special license. At the heart of this application is whether issuing a special licence meets the object of the Act. In addition to the object of the Act we are required to have regard to matters pertaining to the nature of the event, other goods and services on offer, the suitability of the applicant, effects on amenity and good order, the days and timing of the event, the design and layout of the premises, any training and steps undertaken to ensure compliance with the Act and provision of food, low alcohol and non-alcoholic drinks, information about transport and matters raised in the agency reports. The matters we are to have regard to follow those for on and off licences pursuant to s105 of the Act. Our approach is the same.

The object of the Act.

[21] The Object of the Act is as follows:

Object

(1) The object of this Act is that—

(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—

(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and

(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[22] There are two arms to the Object of the Act and both must be met. In terms of the first arm we need to be satisfied that the sale and supply of alcohol by the applicant should be undertaken safely and responsibly. The second arm requires that harm caused by excessive or inappropriate consumption of alcohol should be minimised. 'Minimised' means reduced to the smallest amount, extent or degree. It does not mean eliminate altogether.⁵ In *Medical Officer of Health v Lion Liquor Retail Limited*, Clark J held that

"the legislative framework enacted by the 2012 Act was intended to restrict rather than relax drinking laws. The legislative measure proceeded on the basis of clear evidence showing a link between availability of alcohol and alcohol-related harm."

[23] Our role is an evaluative one, and we need to have regard to the extent to which granting a licence with conditions should minimise alcohol related harm.⁶ There is a presumption built in to the Object of the Act that excessive or inappropriate consumption of alcohol causes harm i.e. harm caused by *excessive or inappropriate* consumption of alcohol.

[24] 'Harm caused by excessive or inappropriate consumption' is defined broadly in in s4(2) to include harm in the form of crime, damage, disorderly behavior, illness or injury to individuals and to society generally and includes direct and indirect cause or contribution to harm.

[25] We find on the evidence that the event can be undertaken safely and responsibly.

[26] The central issues for this application relate to the second arm:

- (a) Is this a child focused event?
- (b) Is the sale and supply of alcohol at a child focused events (or even a family focused event) by its nature 'inappropriate consumption of alcohol'?

⁵ See Shorter Oxford Dictionary; *Re Peony Spirits Limited* [2014] NZARLA 696 at [19]; *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980 at [18] and *Auckland Medical Officer of Health v Birthcare Auckland Limited* [2015] NZHC 2689 at [115].

⁶ Alcohol related harm is defined in s5 to mirror that in s4(2) of the Act.

- (c) Has the harm caused by that inappropriate consumption of alcohol been minimised?

[27] On the evidence before us we find that the event is more accurately described as a family focused school community event. We were told that it provides an opportunity for parents to reconnect and provides for both children, their parents and teachers. We accept the correction to the description provided by Mrs Oram in her letter of 16 January 2019.

[28] We do not accept Mr Ferguson's argument that the reference to 'inappropriate' is linked to, or is simply an extension of, the concept of excessive consumption of alcohol or is limited to harm caused by intoxication. The Act clearly identifies harm from both excessive consumption or inappropriate consumption. What is inappropriate will depend on given circumstances and context or nature of the event. In an environmental law context, the meaning of 'inappropriate' in s6 of the Resource Management Act 1991 was considered in the context of what part of the environment is being sought to be protected.⁷ Here, context and the harm that is to be minimised is also relevant. S4(2)(a) and (b) broadly defines alcohol related harm and extends to harms which are not confined to those caused by intoxication.

[29] Dr Humphrey accepted that steps that are to be taken such as the separation of the children's entertainment area and the good management of the event do reduce the harm caused, but he did not consider it to be minimised. He was of the view that any consumption of alcohol at a child focused event was inappropriate and we should decline the application so children can have some relief from the normalisation of alcohol consumption.

[30] It is not our role to make an overriding policy determination or to 'make a stand' as to the appropriateness of the consumption of alcohol at events attended by children. That is the role of the legislature, perhaps the Ministry of Education (in a school context) or the individual school boards. It may also be a matter for the wider community and territorial authority in the context of formulating a Local Alcohol Policy. The evidence before us is that there is an indirect effect on children caused by any consumption of alcohol by adults regardless of setting. Children are exposed to alcohol consumption in the home and on licensed premises and the fact that children are at an event, or catered for at an event, does not of itself make it inappropriate. Indeed, the Act contemplates that licences may be granted for all manner of events and includes a designation tool to restrict the exposure of minors on

⁷ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 41 at [98]

some premises or in appropriate circumstances.⁸ We find it is not our place to make a stand to provide children some relief from the normalisation of alcohol consumption. We must decide individual applications on the merits and in accordance with the law.

[31] We find this to be a family focused school community event. It is limited to two and a half hours and alcohol is an incidental accompaniment to the event. We find the provision of alcohol at the event is not inappropriate or contrary to the object of the Act simply because entertainment is also being provided for children. We find on the evidence before us that any indirect harm caused to children attending the event should be minimised through the duration of the event, the restricted licensed area to exclude the children's entertainment area, locating bar away from the children's entertainment area and requiring adherence to the AMP.

[32] We record that in the original application it was suggested that the licence would be designated as 'supervised', but this was later changed to 'undesigned' at the suggestion of the Inspector. This was done due to the practical difficulties with enforcement if children entered the supervised area unaccompanied by their parent. Given the nature of the event and lay out of the school we consider this to be reasonable. We prefer to exclude the children's entertainment area from the licenced area, so it is clear that there is to be no alcohol consumed in that area. That was agreed to by the applicant. Although we were told there is no physical barrier between the adult mingling area and the children's entertainment area, we would strongly recommend that the two areas are separated by some form of barrier and/or signage.

Other matters in s142

[33] We have had regard to the fact that the applicant will offer a range of children's entertainment activities set apart from the area where alcohol will be sold, supplied and consumed. The applicant, through its president Mrs Oram, satisfies us that she is suitable to hold a licence given the purpose and short duration of the event. There is no evidence that the event will reduce the amenity and good order of the locality by more than a minor extent. We are satisfied that the design and layout of the premises, particularly the separation of the children's entertainment area, is appropriate. The applicant has provided a detailed Alcohol Management Plan that provides guidance to the volunteers involved in running the event that should ensure that the law is complied with. We are satisfied that the applicant is providing adequate food, low alcohol and non-alcoholic beverages and information regarding

⁸ SSAA, s119.

alternative forms of transport. We have had regard to the matters raised in the agency reports made under s141 of the Act.

Section 213(1).

[34] In the absence of any objection to the appointment of Mr Luhrs as the bar manager and having considered the nature, duration and scale of the event we are satisfied that it is appropriate to grant an exemption from the requirements to have a qualified duty manager in attendance at the event and grant an exemption accordingly.

Decision

Having had regard to the matters in s142 of the Act we find that granting the application subject to conditions is consistent with the object of the Act and grant the licence accordingly.

The Licensed Premises

- (a) This special licence authorises the sale, supply and consumption of alcohol within the premises identified on the plan dated 16 January 2019 and attached to and forming part of this licence, but excluding the area identified as the entertainment and kids' activity zone.

Compulsory conditions – section 147(3)

- (b) Alcohol may only be sold under the licence only on the following days and during the following hours:

Friday 15th February 2019 from 500pm to 7.30pm.

- (c) Drinking water will be freely available on the premises as specified in the application:

Discretionary conditions – section 147(1)

- (d) The licence holder must display 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.

- (e) Food must be available for consumption on the premises as specified in the application.
- (f) Low-alcohol beverages must be available for sale and supply on the premises as specified in the application.
- (g) Non-alcohol beverages must be available for sale and supply on the premises as specified in the application.
- (h) The licensee must provide assistance with or information about alternative forms of transport from the premises as specified in the application.
- (i) A copy of the licence as well as age restriction signage must be clearly displayed.
- (j) Entry is restricted to ticket holders only.
- (k) Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application excluding the area identified as the entertainment and kids' activity zone.

The licence is also subject to the following conditions, which in the committee's opinion are not inconsistent with the Act:

- (l) Noise should be controlled so as not to disturb neighbouring residents.
- (m) The licence holder shall comply with the Alcohol Management Plan dated 16th January 2019.

[35] The applicant's attention is drawn to s 259 of the Act which makes it an offence to not comply with certain requirements and restrictions imposed by or under the Act.

[36] A copy of the licence setting out the conditions to which it is subject is attached to this decision.

DATED at CHRISTCHURCH this 24th day of January 2019.



Cindy E. Robinson
Chairperson of the Christchurch District Licensing Committee