

Decision No. 60B [2015] 1453

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012.

AND

IN THE MATTER

of application under s. 99 of the Sale and Supply of Alcohol Act 2012 by **Noir 14 Limited** in respect of premises at **335 Lincoln Road, Christchurch**, known as **The Town Tonic**.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: **Mr P R Rogers**

Members: **Messrs P Buttell and D Blackwell**

HEARING at Christchurch on the 6 July 2015

PRESENT: **Samantha Bennett** – Owner and operator of the premises
Jamie Bennett – Director and operator of the premises
Jennifer Davison – Alcohol Licensing Inspector
Constable Genevieve Craddock – NZ Police
Peter Shaw – Representing the Medical Officer of Health
Janet Anderson – Committee Adviser

INTRODUCTION

This is an application by Noir 14 Limited for a renewal of an On-Licence in respect of premises trading as a restaurant situated at 335 Lincoln Road, Christchurch, known as The Town Tonic. Jamie Bennett is the owner/director of the business and head chef. At the Hearing it was revealed that Samantha Bennett had recently taken over the administrative side of the business.

The application was received by the Christchurch District Licensing on 5 May 2015, therefore the criteria under s.131 of the Sale and Supply of Alcohol Act 2012 will apply.

The Alcohol Licensing Inspector and the Police (the Agencies) have opposed the application. There were no public objections. Both the Inspector and the Police opposed the application over concerns around the applicant's suitability pursuant to s.131 of the Act in relation to his management of the premises and the applicant's seeming lack of understanding of the legislation. A representative of the Medical Officer of Health appeared in support of the opposition to the application.

The Agencies had concerns over the number of certificated managers working at the premises; on the visit to the premises they found no certificated manager working and the name displayed as manager was "Jamie". The applicant "Jamie" is not the holder of a manager's certificate. There were also issues around the appointing of acting and temporary managers.

THE HEARING

On behalf of the applicant, his wife produced a well prepared brief which she read from and this detailed the changes that had been made and the current operating procedures at the restaurant. The applicant then gave evidence as being the head chef and had been working long hours and had recently gone through a difficult business separation with the previous co-owner. When asked about his experience in the hospitality industry he related he had extensive experience, 12 years as a licensee and about 25 years in the industry. He stated he was driven to present good food but admitted under cross examination he should have paid more attention to his responsibilities in relation to the selling of alcohol.

The applicant was cross examined over the situation regarding how many certificated managers were employed at the premises. He replied there is currently only one certificated manager Carly Robinson, but this had now been addressed and another staff member should be certificated shortly, with other staff having the Liquor Controller Qualification (LCQ) or in the process of obtaining it. The Inspector confirmed that should the person pass the test conducted by the Alcohol Licensing Team which he was due to sit on the day of the Hearing then he could be certificated by the end of that week.

The applicant admitted he was not aware of the responsibilities around appointing acting and temporary managers and this was something which was being corrected. The applicant confirmed that a record of appointment of temporary and acting managers was being kept as this legislative requirement was not something that was done in the past.

In response to a question from the Committee and confirmed by the Agencies, the applicant confirmed that even though involved in running the kitchen, the layout of the premises lent itself to him having a view of the whole restaurant giving him sufficient oversight of the premises.

No other issues have been raised by the Agencies in regards to s 105 of the Act.

SUMMING UP by the Agencies, the Inspector produced written submissions, and in particular highlighted to the Committee the case law,

Page v Police (HC Christchurch AP84/98 24 July 1998) Panckhurst J said: "[Section] 13(1)(a) provides that the applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding"

The Judge was quoting the section from the old Act, however the new Act has the corresponding legislation. The Inspector also referred us to:

Hayford v Christchurch District Licensing Agency (HC Christchurch, AP201/92, 3 December 1993) where Holland J said; "A holder of a liquor licence under the Sale of Liquor Act is granted a privilege. It permits him to sell liquor when others are not permitted to do so,".

The Inspector and the Police confirmed that they had no concerns despite the lack of correctly appointed managers over sales to minors or intoxication issues and that the focus was very much on food.

In the closing of her submission the Inspector advised the Committee that as a result of what she had heard today she withdrew her opposition both to the trading hours and to the opposition based on the suitability of the applicant. It was her view that if the procedures to remedy the situation as articulated in the brief produced by Mrs Bennett and the acknowledgements by the applicant under cross examination, then the applicant should be able to manage the premises in a responsible manner in line with the object and intention of the Act.

The Police also withdrew the opposition and Mr Shaw for the Medical Officer of Health confirmed that while he was only there in a supporting role; he agreed that the continuation of the 1.00 am trading was appropriate for the location of the premises.

DECISION

This Hearing revolved around opposition from the Inspector and the Police in relation to s. 131(1)(a) and s.105(b) of the Act, namely the suitability of the applicant due to a seeming inability for him to ensure the premises had a manager appointed under the Act. There was also a failure to properly appoint temporary and acting managers, and to notify the Agencies as required under the legislation of those appointments.

The Committee was left wondering why a person with so much experience in the industry either did not know or chose to ignore the basic requirements around the appointing of managers. In his defence he was clearly a very motivated chef working long hours whose passion was food, perhaps to the exclusion of his other responsibilities.

The Committee after hearing what the applicant and his wife had to say were swayed by what his wife told us and the changes that had been implemented. She portrayed a strong administrative

grasp of the situation and the Committee wondered why she had not been previously more involved in the running of the business. It was explained that the structure of the company had recently changed and the applicant had parted ways with his previous business manager and this may go to explain the situation and the problems the applicant has been having.

While it is not a requirement that the licensee has a manager's certificate it was suggested by the Agencies that he undertake the (LCQ) course and the Committee urged the applicant to take the time to do this.

The Committee refers to the case law quoted by the Inspector; **Deejay Enterprises Ltd LLA 531-532/97**, when the Liquor Licensing Authority went on to state:

"The overall standard of suitability for the holder of an on-licence is higher than the standard required for the holder of a general manager's certificate...ultimate responsibility remains with the licensee."

Likewise the Agencies suggested to the applicant's wife that she should have more control of the business and a way of doing this would be for her to become a director of the company. While not in our power to direct we once again urged the applicant and his wife to consider this option.

After hearing all the evidence the Committee was in agreement with the position the Inspector and the Police took in withdrawing their opposition. The Committee advised the applicant that it would be issuing a written decision granting the application. We are satisfied as to the matters to which we must have regard as set out in s.131 of the Act and we grant the licence for a period of 3 years pursuant to s.104 of the Act.

A **waiver** is sought and granted pursuant to s.208 of the Act in respect to the lodging of the application being outside the prescribed time as set down in s.127(2)(b) of the Act. The application for renewal being lodged two days before expiry of the licence, the Committee in the circumstances is of a mind to grant the waiver.

The applicant's attention is drawn to s.259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under this Act. Specifically s.46 to 63 and 231 (1).

The licence will be subject to the following conditions:-

Compulsory conditions – section 110 (2)

The following conditions are compulsory:

(a) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day to any person who is not present on the premises to dine.

(b) Alcohol may only be sold the following days and during the following hours when the premises are being operated as a Restaurant:

Monday to Sunday 8.00 am to 1.00 am the following day

(c) Water will be freely available to customers on the premises while the premises are open for business.

Discretionary conditions – section 110 (1)

- (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.

- (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, supplied and consumed within the area marked on the plan submitted with the application.

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

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

- (d) **Other restrictions and requirements**

Section 50 – One-way door restrictions in local alcohol policies to complied with

Section 51 – Non-alcoholic drinks to be available

Section 52 – Low alcoholic drinks to be available

Section 53 – Food to be available

Section 54 – Help with information about transport to be available

Section 56 – Display of signs

Section 57 – Display of licences

Section 214 – Manager to be on duty at all times and responsible for compliance

A copy of the licence setting out the conditions to which it is subject is attached to this decision. The licence shall be issued for 3 years.

THE LICENSED PREMISES

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

DATED at Christchurch this 9 day of July 2015.



P R Rogers

Chairperson

CHRISTCHURCH DISTRICT LICENSING COMMITTEE