

Decision Number 60C [2014] 1946

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

AND

IN THE MATTER of an application by L Hotel Akaroa Ltd
for renewal of an On Licence for
premises known as L Hotel situated at
75 Beach Road, Akaroa.

BEFORE THE CHRISTCHURCH DISTRICT LICENCING COMMITTEE

Chairman_Mr R.J.Wilson JP

Members Mr A.J.Lawn
Mr P. Buttell

HEARING at Christchurch 21st August 2014

APPEARANCES Mrs I.G.Evans, Mr D.J.Evans, Mr T.D.Evans and Ms M.Parkinson
for L Hotel Akaroa Ltd
Ms J.Davison Alcohol Licensing Inspector
Mr P.Spang Alcohol Licencing Inspector
Mr J. Alps Environmental Compliance Officer
Constable S.Joy NZ Police
Mr P.Shaw for the Medical Officer of Health
Mr G.Freeman JP Objector
Mrs J. Anderson Hearings Adviser

DECISION OF THE CHRISTCHURCH DISTRICT LICENCING COMMITTEE

(1)We are dealing with an application by L Hotel Akaroa Ltd for renewal of its On Licence for premises known as L Hotel situated at 75 Beach Road, Akaroa. When the licence was last renewed in 2013 there were a number of public objections relating to noise and the reporting agencies also opposed the renewal. Following undertakings given by L Hotel management to address the issue the objections were withdrawn. The licence was subsequently renewed for the truncated period of twelve months. The hours were reduced by consent.

(2)This application has also attracted an objector Mr G.Freeman who owns property immediately across the street from the L Hotel premises. Mr Freeman's objection again relates to excessive noise. The Medical Officer of Health objects to the renewal on the same grounds.

(3) At the outset the Chairman sought clarification as to whether the matters the Committee needed to focus upon were those identified in s105(h) of the Sale and Supply of Alcohol Act 2012 (the Act) relating to amenity and good order with particular regard to current and possible future noise levels or whether the suitability of the applicant was also an issue. In an opening statement Ms Davison, Alcohol Licencing Inspector said that in her opinion the main issue was noise. She saw suitability as a lesser issue. As it turned out suitability became a much more prominent matter as will be explained later in this decision.

EVIDENCE OF APPLICANT

Mrs I G Evans

(4) Mrs Evans spoke initially for the applicants reading from a Brief of Evidence. She explained that she was a director of the company whose role in the management of the business was largely in the administration of finance, staffing and the like. She had not been on the premises on the night of the complaint, 25th April 2014, but on becoming aware of the complaint had made enquiries into it. She believed that Mr Freeman's allegation of excessive noise had not been substantiated. She considered that the fact that Mr Freeman had complained to the Council's Noise Control Officer at 9.19 pm only 19 minutes after he returned to his property after being absent in the earlier part of the evening showed a preconceived intention to complain. She questioned that the noise level was over loud certainly not sufficient to cause vibration in Mr Freeman's property. Mrs Evans said that Mr Freeman had stated that the noise was so great that he was obliged to leave his property at 11 pm and return to Christchurch whereas the band had actually ceased playing at 10.40 pm. Mrs Evans also said that she had spoken to several people the next day who had been present the night before. They had made very positive comments about the enjoyable evening they had.

(5) Mrs Evans tendered as exhibits two letters in support of her position. The first was from Mrs Kathryn Smith a local resident who said that she was one of a group which had stopped at L Hotel while walking past attracted by the music and the pleasant atmosphere. She said they were able to stand within 8 metres of the band and talk comfortably amongst themselves while watching a large well behaved audience of diverse ages enjoying themselves. She left about 10.30 pm as the band was winding down and considered she had a very pleasurable evening.

(6) The second letter submitted was from Mr Ray Bygate, leader of the band and also Principal of the Akaroa Area School. Mr Bygate said that the band played an eclectic range of ambient and popular music from 7.30 pm to 10.40 pm with one break of around 15 to 20 minutes at about 9 pm. The nature of the music was such that patrons could converse, observe or dance. At no point was there any indication that the band was playing too loudly.

CROSS EXAMINATION

(6) Ms Davison reminded Mrs Evans of the number of objections at the time of the last renewal and asked whether she was aware of the provisions of s105 of the Act relating to amenity? Mrs

Evans confirmed that she was. She said that if there had been complaints of noise since then the authorities would have taken action.

(7) Constable Joy ascertained from Mrs Evans that she was not really involved with the front of house management of the business. She had no involvement with the bands and she did not often attend. Mrs Evans confirmed that all L Hotel staff lived in Akaroa. Some had cars but others walked to work.

Mr T Evans

(8) Mr Thomas Evans read from a single page handwritten brief of evidence. He confirmed that he was at L Hotel on the night of 25th April 2014 but said he had gone home around 9 pm leaving his partner Meg Parkinson and two staff to finish off. He said he was confident that the management systems that had been put in place at L Hotel were well thought out and executed in a professional and respectful way to all parties. He said they were constantly talking about improving their systems with direct involvement of staff.

CROSS EXAMINATION

(9) In response to Ms Davison, Mr Evans confirmed that staff training was done on a day to day basis. There were no written manuals but he and Meg (Parkinson) had always been there when bands were playing. Duty managers have all undertaken the required training. However Mr Evans said that no specific training had been undertaken on the provisions of the new Act. Mr Evans was unable to recall the object of the Act when asked. Mr Evans said staff were allowed one drink after work and all the doors were shut at that time. Music would be playing in the bar but not loud. He believed that L Hotel had a good relationship with business owners and Akaroa residents.

(10) To Constable Joy, Mr Evans said that at this time of year they usually close around 9 pm but in the summer months it would be midnight. He would probably work two nights a week with other duty managers covering the other five nights. He confirmed the names of the duty managers were displayed on the premises. In the last eight months L Hotel had only had two bands and would probably have engaged only four bands in the whole year. Usually the band would play from 6.30 pm to 10.30 pm. Bands are usually local except for last New Years Eve when a band from Christchurch was used. L Hotel aims for a family atmosphere and bands play "kiwi" music, rock, jazz but nothing heavy. The bands are amplified but not loud. Mr Evans said he advertised when they had a band on Facebook and by way of flyers. He walked around the various business houses with the flyers himself so everyone knew what was happening. He would also ensure the local police were happy with the arrangements.

(11) Mr Shaw for the Medical Officer of Health asked what had been done differently since the meeting in September 2013 to address noise complaints. Mr Evans replied that he had held a staff meeting and made staff aware of how important it was to follow the rules. Patrons had to come inside by no later than 11 pm and drinks were not served at outside tables after 10.30 pm. Outside heaters were also turned off at this time. Mr Evans admitted that he had known

about the present public hearing (before the District Licensing Committee) for a few weeks but thought it would be more like the meeting he had last year with the authorities and objectors. He undertook to make a big effort to get up to date on the new legislation. He accepts that the rules have changed and he needs to make himself aware of the changes and make his staff aware.

(12) Mr Lawn asked whether he was aware that the Committee had the ability to refuse to renew his licence and that although suitability had not been raised as a significant issue earlier it was always on the table. Mr Evans responded that all his staff had completed their duty manager's certificates. In response to Mr Lawn's advice that a training manual was also necessary Mr Evans stated that he had sat down with his staff and gone through everything following the September meeting but he had not put anything in writing. There were management systems but these were verbal not written down. He confirmed that his instructions were that last drinks outside were at 10.30 pm and the heaters were turned off then. L Hotel does not have bands playing outside – this was an undertaking given at the September meeting. The business is mainly based on the restaurant, perhaps 60% food and 40% alcohol and accommodation combined. He had not arranged for any outside training for himself or his staff.

(13) Mr Buttell asked how many staff were behind the bar on a busy night. Mr Evans replied that there would be two assisted by the wait staff who served the tables. There would be less in the winter when there may be only two or three people in the bar. If it was busy he would assist himself by clearing glasses and moving around the premises keeping an eye on things. On the night of 25th April 2014 he went home about 9 pm. ANZAC Day was an important day in the local community but the music at L Hotel was not a big feature. He agreed however that the band did draw a good crowd. L Hotel used to provide bands about ten times a year but there is more competition now and they have reduced to three or four a year. At other times they just play background music. There is a speaker in the outside area but he thought you would barely hear it across the road. He did not previously have an incident book but he has one now. He is aware that he needs to advise the Council's licensing team if a new manager is appointed but he does not keep a book recording the appointment of managers.

Ms Meg Parkinson

(14) Ms Parkinson read her brief of evidence. She said she was the duty manager on the 25th April and had dealt with the Noise Control Officer. She confirmed what had previously been given in evidence by Mrs Iona Evans. She believed that from her perspective there were no issues regarding management systems. She said L Hotel had a strong professional team and strictly complied with all policies. She thought they were responsible hosts.

CROSS EXAMINATION

(15) To the Licensing Inspector Ms Parkinson confirmed that L Hotel has a written Host Responsibility Policy. She said she was on the premises two or three days a week. She was

aware that L Hotel had failed a controlled purchase operation in 2011. They now have signs on the tills about service to minors. They had also had a meeting with staff to make them aware of the consequences. There is also a sign on the wall. New staff are informed of the rules when they start and they use a "buddy system" to ensure they can deal with any issues. All staff know that they must not allow intoxicated persons to enter the premises and to stop serving alcohol to people who are becoming intoxicated. Staff communicate between themselves and know how many drinks a customer has had. There is water on the table and if there is a concern staff will talk to people at the table.

(16) In response to Constable Joy Ms Parkinson explained that L Hotel subscribed to Sky Discs which was jazz and café style music. There are speakers in the bar, restaurant, the kitchen and outside. Each speaker has its own adjustable level, higher in the bar and lower outside. The music is turned off at 11 pm as there is guest accommodation upstairs. Windows in the bar will be open if it is hot but this does not make much difference to the noise levels. The music is not noisy and the windows open into the alcove area which is covered in. When a band is playing it is based in the restaurant area which is in the centre of the building. Ms Parkinson said she would be on duty if a band was playing as they would be busy then. There would likely be one duty manager and three other staff members. In addition to these staff there are full time kitchen staff. The chef may finish early but there are always kitchen staff to provide snacks and pizzas until late. If she was on duty she would also help out in the kitchen and later on with snacks. If she is not on duty staff know they can always call her. She thinks staff are well supported but accepted the need to put things in writing and have a more structured system.

(17) In answer to Mr Shaw for the Medical Officer of Health, Ms Parkinson confirmed that she had updated her manager's certificate recently. She believed the new legislation was more thorough. She had never spoken to Mr Freeman (the objector) and did not know he had complained on the night of 25th April. She had seen him come over to the hotel once or twice a year.

(18) Mr Lawn asked who was the main person in charge at L Hotel. Ms Parkinson said it was Tom Evans. She said a Noise Engineer had not been consulted nor was she aware of the decibel level allowed in the area

Mr Buttell asked her to run through the events of the 25th April when the Noise Control Officer came. She said that the Noise Control Officer had arrived and told her that a complaint had been received. By that time the band had stopped playing. Everyone in the bar was in a good mood and enjoying themselves but it was towards the end of the night so she had turned the sound system off anyway. She was not aware that it had been noisy earlier. She said families had been there and there did not seem to be any issues. There were about 50 people left in the bar and at the outside tables at that time

(19) Neither the Police nor the Medical Officer of Health wished to present evidence.

THE OBJECTOR

(20) Mr Gordon Freeman gave evidence that he owned a property directly opposite L Hotel and had done so since before the hotel was established. There had been several different owners in that time and there had been no previous problems. He was not one of the objectors in 2013 and had actually written in support of the renewal of the licence at that time. He comes to Akaroa from time to time to check on his property and that of a neighbour but is mainly in residence at holiday time. His main concern is the noise after the premises close. He said there was a congregation of people outside the hotel and staff were noisy when leaving. He believed there was no appropriate staff training to comply with the law and no consideration for neighbours. In his letter of complaint he had made it clear that he was embarrassed to need to make a complaint. He is supportive of the industry and of L Hotel. He had been involved in the liquor industry for many years and was in favour of the use of bands. On the evening of 25th April he saw a band in the gazebo and a band in the awning area. By 10 pm the noise was causing the windows of his residence to vibrate. He made attempts to contact L Hotel by telephone but got no reply. He had also made numerous attempts to contact Tom Evans and had left messages for him to return calls without success. He felt very sorry for the people who were in the guest accommodation at L Hotel. He did not leave his property until 11 pm and he understands that the Noise Control Officer attended at 12.05 am. He cannot believe there is so little consideration for neighbours. His is a valuable property but he cannot stay there because of the noise.

CROSS EXAMINATION

(21) Mr Shaw for the Medical Officer of Health queried what appeared to be a discrepancy in the evidence. Were there two bands or just one? Mr Freeman responded that there was a second band in the canopy area which was accompanying the first band playing inside. The second band was saxophones and trumpets and he could see it from his property, a distance of little more than twice the width of the Hearing Room.

(22) Mr Tom Evans asked Mr Freeman to confirm that he had frequently left messages with staff for him to call back. Why had he not rung on his cell phone? He put it to Mr Freeman that his complaint was motivated by a desire to buy L Hotel. He was aware he had made enquiries about it. Mr Freeman replied that he had no personal interest whatever in buying L Hotel but he had made enquiries on behalf of an absent friend when he became aware it was on the market. His enquiry was not related to his complaint.

(23) Mrs Evans said that she was unaware of Mr Freeman's letter of complaint or of his attempts to contact Tom. She disputed that there were two bands. Mr Freeman confirmed what he had said earlier. He repeated that his property was very close and he could look into the two areas. There were definitely two groups of instruments.

CONCLUDING SUBMISSIONS

(24) The Licensing Inspector said she had no evidence that the terms of the licence had been breached otherwise she would have taken action. However as a result of the evidence she now had some slight concern as to the suitability of the licensee. There have been relatively no changes since the renewal of the licence in 2013. There is little demonstrated understanding of the new legislation. There are no systems for staff training in place and the applicant has made no requests for outside assistance. There was no register of managers. She referred to the case of *Open Focus Ltd (LLA PH 579/2004)* where the judge held that holding a licence was a privilege not a right and a licensee had responsibilities. It was in his best interests to get on with his neighbours. In *Paihia Saltwater Ltd (LLA PH 379/01)* it was held that excessive noise from music was evidence of bad management. The issue of suitability was also addressed in *Gold Coast Supermarket [2001] 2NZLR 769* which stated that this included having proper controls in place.

(25) However Ms Davison believed that all these matters can be rectified and she recommended a renewal of the licence for a further period of twelve months with a condition that suitable staff training manuals and written policies and procedures be provided to the Licensing Inspector within three months of renewal.

(26) Constable Joy stressed the importance of getting the small things right. The Police supported the Inspector's recommendation.

(27) For the Medical Officer of Health, Mr Shaw pointed out that L Hotel had been trading for twelve months since the last renewal without complaint. If it had not been for the public hearing required by the receipt of an objection, the agencies would not have known about the lack of systems in place. He did not oppose the renewal and supported the Inspector's recommendation. He is willing to assist the applicant to meet any conditions imposed.

(28) Mr Evans assured the Committee that he was keen to rectify the deficits that had been identified.

The hearing concluded at this point with the decision reserved.

DISCUSSION

(29) This hearing was necessitated by an objection being lodged by a member of the public because of excessive noise from the premises. The Medical Officer of Health also desired a public hearing so that noise concerns could be canvassed. Unfortunately we were unable to reach a view as to this aspect. We heard clear and straightforward evidence from Mr Freeman to the effect that noise from the band (or bands as he was sure there were two) was excessive. Indeed he was so disturbed by the noise that he chose to leave his property at 11 pm and drive all the way back to Christchurch to escape it. Mr Freeman is experienced in the hospitality

industry himself and was at pains to make clear that he did not oppose the renewal of L Hotel's licence as such but simply wanted action on the matter of excessive noise. Mr Freeman is a former city councillor and is a Justice of the Peace. We found him a credible witness.

(30) On the other hand Meg Parkinson who was the Duty Manager on the night in question testified that she was unaware of any excessive noise or complaint of it until the arrival of the Noise Control Officer. By that time the band had ceased playing. There is no direct evidence to support her position but Mrs Evans as part of her evidence tabled letters from a member of the public who was present on the night and the band leader himself, who happens to be the Principal of the local area school. Both persons refuted the complaint. We have no reason to doubt what they say and give their letters what weight we can, given that neither person was present and available for questioning.

(31) There was no way we could resolve this apparent conflict. However we are mindful that it is not necessary for there to be a number of complaints to support a complaint of excessive noise. The Licensing Inspector has referred us to the decision of the Liquor Licensing Authority in *Paihia Saltwater Ltd*. This is a well known and often quoted decision. The Judge said

“(27) It is our view that no-one should have to put up with persistent interference with their sleep patterns. We do not think it is sufficient to submit that a true test is the number of calls to the licensed premises or the Noise Abatement Officer. We have heard enough evidence to suggest that making such calls in the early hours of the morning is unpleasant and often unrewarding.

(28) Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management...”

We are satisfied that Mr Freeman was disturbed although we are unable to determine whether the noise was excessive to others or for how long it went on. It is sufficient that a member of the public was inconvenienced by the activities taking place on licensed premises. He does not have to put up with that.

(32) However as we have already indicated the matter of excessive noise became of less significance in the course of the hearing as our concerns about the lack of documented management systems grew. We were disappointed that it appears that little has been done since the licence was last renewed to ensure that situations like this do not arise. Frankly we thought that Mr Tom Evans was ill prepared for the hearing. While we are prepared to concede that he possibly does have a good understanding with his staff as to what is required to comply with the law he was unable to demonstrate that. To do so he needs documentation which it appears does not exist. We would have thought that he would be more aware of the requirements of the new legislation than he appears to be.

(33) We are required by s105(1)(b) of the Act to have regard to *the suitability of the applicant* when reaching a decision about whether a licence should be renewed. At this time we have some reservation about Mr Tom Evans' suitability to hold a licence based on his professed

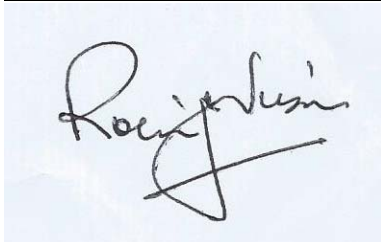
ignorance of the legislation and his failure to prepare and implement documented management systems. However we agree with the Licensing Inspector that this is not a deficiency which is incapable of being addressed. To the contrary we see no reason why with some effort put into the matter Mr Evans should not be able to bring himself up to date quite quickly. He should also be able to produce the documented systems required. He has had the offer of advice and support from the representative of the Medical Officer of Health and we are certain the Licensing Inspector and the Police will also give him guidance as required.

(34) It is therefore our intention to allow time for this to be done We also wish to see if L Hotel can trade over the busy summer months without causing disturbance to neighbouring residents. We intend to adjourn this hearing for six months. Within the first three months we require the applicants to prepare and produce to the Licensing Inspector such documented systems as she may require. At the end of the six month period should there be no further complaints it is our intention to grant the renewal of the licence on the papers, that is without the need for a further public hearing. We do however give notice that such renewal is likely to be for a further truncated period. We have in mind a period of two years.

DECISION OF THE CHRISTCHURCH DISTRICT LICENCING COMMITTEE

The application of L Hotel Akaroa Ltd for renewal of its On Licence is adjourned for six months. Within three months the applicant is to prepare appropriate documented management systems to the satisfaction of the Licensing Inspector. The Inspector is to prepare a report for the Committee to confirm this work has been done and to recommend suitable conditions for the renewal of the licence. The application will be decided on the papers in the absence of further complaints from the public or concerns expressed by the Reporting Agencies.

DATED at Christchurch this 3rd day of September 2014

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

R.J.Wilson
Chairman