

SESSION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairman : Mr G B Buchanan
Members: Mr A J Lawn
Mr D Blackwell

HEARING at The Papanui Service centre , CHRISTCHURCH on the 26th of March 2014

APPEARANCES

Mr M. Ferguson Christchurch City Council Licensing Inspector
Sergeant Giddens for NZ Police
Mr P Shaw On behalf of the Medical Officer of Health

APPLICANTS

Mr G Yee
Ms O Boote

Objectors
Ms M Robertson
Mr M Hurrell
Ms D Horton
Mrs M Howley
Mr B Robertson

Introduction

- (1) This decision relates to an application for 5 special licences under section 22(2) of the Sale and Supply of Alcohol Act 2012.
- (2) These applications relate to the premises situated at 22 Harewood Road, Papanui, Christchurch. known as "Club22". The premises have been the subject of three recent decisions *Oliver Lauren Joy Boote (2012 NZLLA PH 243* , *Papanui Carpark Limited (2012)NZLA PH 842* and *B L Group 2013 Limited (2013 NZ PH 1192)*
- (3) When these premises operated as an on-license there was considerable criticism of the manner in which it was being operated. As it operated as night club, it attracted a younger clientele and a number of problems were identified with the behaviour of people attending these premises.
- (4) Subsequently Club 22 was refused a licence to operate an on-licence under section 7 of the Sale of Liquor Act 1989.

- (5) The premises are situated in an area zoned Business 2 in the Christchurch City Plan. This zoning allows for the operation of a licensed premises on this site. The maximum number of occupants permitted on the premises is. The premises at this address operated as the Papanui Tavern for a number of years before it was purchased by the current owner and operated as Club 22.
- (6) The committee has decided to combine these five applications for a “special licence” together, as they all relate to Club22 and because of the business relationship the two applicants have with each other.

The Application

- (7) Mr Yee is the applicant for 4 of the licences. He said that he had spoken to the owner of the premises, Mr Boote and asked if it could be utilised for private functions. Mr Yee explained that through his contacts in the community, he knew of organisations, such as community groups and sports groups that would like to hold “events” to fundraise for their individual cause.
- (8) Mr Yee said that he arranged to take over the bookings, site hire and vetting of function holders. He would also arrange the employment of the staff necessary to run the events.
- (9) The applications are made by him and each of these applications is for an individual event unrelated to the others. Entry was by ticket or invitation only and Club 22 was not being operated at all similar to a night club.
- (10)Mr Yee accepted that there were issues concerning the operation of Club22 previously when it was operated as a night club.
- (11)Mr Yee said that he has completed the Licence Controllers Qualification course but does not hold, nor wish to hold, a Manager’s Certificate. He has not undergone any additional alcohol related training.
- (12)He gave evidence that he has attended all the events that he has organised and generally stayed to the end of the event to ensure it was run properly.
- (13)Mr Yee said that he employed Lloyd Miller as the manager. That Mr Miller has a Manager’s certificate and that he has had considerable experience within the liquor industry.

- (14) When cross-examined by Police, Mr Yee said that there were currently no bookings for this venue subsequent to the applications before the committee. He agreed that potentially events could be held weekly or more often. He conceded that Club 22 could be open on a Thursday, Friday and Saturday evening if that was the way bookings worked out. However, he did not think that this was likely. To a question about how many bookings he would take, Mr Yee said that he would hire Club 22 as often as sought.
- (15) Mr Yee in reply to a question about non-alcohol events at the club said that there had been two such events. One a 10 yr old birthday party and one other.
- (16) The Police asked Mr Yee about the staff that were employed at the venue. He said that it was the same staff employed each time and the same Manager. When asked, Mr Yee said that they did have a liquor plan and met 2 hours before each event to brief and train staff.
- (17) Mr Shaw, representing the Medical Officer of Health, asked Mr Yee how the hire of the premises took place and how profits were distributed from the events held. Mr Yee said that no profits were taken by Mr Boote. That Mr Boote donates the venue for free. When a person hires the venue they pay for any advertising or printing of invitations, staff and security. The costs of the alcohol are covered and the profits from this are given to the organisations.
- (18) Mr Yee agreed when put to him by Mr Shaw that he was a "promoter of the venue". When showed a printout of an internet site advertising Club 22 for hire, Mr Yee agreed that they were actively promoting this as a suitable venue for hire. He said that what he was doing was no different to the City Council hiring any of their halls.
- (19) To questions from Mrs Howley, an objector from the community Mr Yee was surprised that noise was still an issue for the community and that the doors had been left open at their last event allowing noise to escape.
- (20) To questions from the committee members, Mr Yee said that he had only been involved in Club 22 since last year and that there had only been two times that Club 22 had been run as a BYO event. He said that because a licence had not been granted in time for the event on 15th March, they held this as a BYO event, rather than cancel at late notice.
- (21) One Application for a Special Licence has been made by Olivia Boote . This is for a Burlesque night on the 29th of March 2014. Ms Boote holds a Manager's certificate and is to be the manager of this event.
- (22) Ms Boote said that this was the third time such an event had been held at this venue and admission was by presold tickets only. There had been no previous incidents of trouble, nor noise complaints.

(23) Police asked Ms Boote how she managed these events and to explain to the committee her procedure. She accepted that the applications for the Special Licences were pre completed in a standard format by Mr Boote's office staff, including the description:

j. We have a 2 hour staff meeting before the event starts to understand and follow host's responsibilities and follow the sale of liquor act.

k. The manager will do hourly sound checks both inside and outside the venue.

(24) Ms Boote said that she was always there 2 hours before the event opened and she would brief the staff about any likely issues. They were usually the same staff, so it was easy enough. If she had new staff she would ensure that they were trained. She conceded that she did not have a training plan, nor records of the training or meetings.

(25) Ms Boote did understand her responsibilities as a manager, but has not attended any additional training and has not completed the transitional training course to assist her to understand the objects of the new Sale and Supply of Alcohol Act. When asked by the Committee she was unable to give the signs of an intoxicated person as defined in the Act, but she did understand what general signs to look for. Ms Boote was not well prepared and at times struggled to answer questions from the committee.

(26) When asked about the times the venue operated without a licence on occasions, Ms Boote said that it had only a couple of times including on the 15th March 2014. When asked, she explained that people were advised that they did not have a licence but could bring a drink. The alcohol was given to the bar staff who kept it behind the bar. The owner was given a number coinciding with the number on their alcohol. A person would then go to the bar with their number and be given one of their drinks.

(27) Ms Boote said that she had not sought employment at any other licensed premises and was now attending university.

Reporting Agencies

The Licensing Inspector

(28) The Inspector's report had previously been supplied to the committee.

(29) Mr Ferguson also gave evidence to the committee that despite the venue no longer being able to operate as a night club, as it had in the past, that the premises still remained viable as a venue for events. He said:

"It is our policy (and normal practice) to allow any venue seeking a special licence outside the four Avenues to be granted a licence until 1.00am."

(30) Concerning the operation of any special licence, the licencing Inspector made the point that

“You are only as good as your last event.”

(31) There was no record of issues of concern since Club 22 had been operating as a venue for hire. That was with the exception of an incident on the 3rd of August 2013 where a display of motor cycle riding in the late evening drew many complaints concerning the noise.

(32) The Licensing Inspector gave evidence that if premises such as Club 22 had to seek an on-licence because of the number of special licences that had been granted then that could potentially mean that premises such as bowling clubs, who often seek a special licence would be require to seek a change to their licences.

Police

(33) Sergeant Giddens did not object to these applications for special Licences . He gave evidence that there had been no incidents at Club22 that he was aware of, other than the incident re the motorcycles in August 2013.

Canterbury Medical Officer of Health

(34) Mr Shaw, representing the Medical Officer of Health, gave evidence. They do not object to the type of events applying for a special licence, nor the running of the events, nor the management or supervision of each event.

(35) Mr Shaw said that he carried out an internet search and found a site advertising Club 22 as venue for hire, giving Mr Yee as the contact person. He produced a screen shot from his internet search as an exhibit. When asked about the council having venues available for hire Mr Shaw said that those that were function centres did have appropriate licences and others, such as halls were hired by scouts and plunket mums.

(36) Mr Shaw said that 13 special licences had been received by his office since 18 June 2013 . One of which had been cancelled. It was his view that as the premises were being promoted and used as a function centre or entertainment venue an on-licence was a more appropriate licence.

(37) Mr Shaw gave evidence that the medical officer of health had some issues regarding the appropriateness of the type of licence being used by Club 22. One of the issues was whether anyone would be able to gain a long term tenancy agreement to operate as an on-licence. The second was that the previous and now obsolete Christchurch Alcohol Policy said that there needed to be a cut off point of 20 special licences where a review of the type of licence was required.

Objectors

- (38) Eight objectors wrote to the committee objecting to the granting of these special licences. Only four of those attended the hearing
- (39) Mrs Robertson gave evidence to the committee that she did not realise that Club 22 had been operating with a special licence so often in the past few months. She said that since Club 22 had been shut down previously, they had very few incidents of damage and disorder around their area or noise. She did express her concern about the trouble when Club 22 had been operating as a night club, but agreed that those issues were in the past and she could not say that any incidents of cars hooning around her area or disorder could be attributed to Club 22. She did express a concern that she could recall a few occasions when she was aware of loud music playing , particularly with loud base noise. She said that not knowing what was happening at Club 22 was a concern for her.
- (40) Mr Robertson also gave evidence to being affected by the noise that was coming from Club 22, but his greatest concern was that the private events weren't particularly private. Although entry may be by way of ticket or invitation, tickets could be sold to any member of the public. Once people became intoxicated then they could just be pushed out the door and onto the streets.
- (41) Mrs Horton, who had not submitted a written objection, gave evidence that it was just the noise of the event and the people leaving that was of concern to her. She had had several nights where the noise disturbed her.
- (42) Mrs Howley was the last witness to give evidence. Again she said how things are now much different to when Club 22 operated as a night club. Her concern was the noise.
- (43) She specifically recalled the noise from the event held on the 15th of March. She also recalled at least two other events that were noisy. She said that she did not call noise control as they never did anything.
- (44) She did not object to the fact that an event was being held at club22 until 1am, but she felt that if there were too many events till 1am, that would affect her. She did not want to go back to the bad old days. She said that she felt that if Club 22 wanted to operate as often as they seemed to be, then they should get a full licence. She said that there was greater scrutiny on Club 22 if they applied for an On Licence.

Decision

- (45) All the evidence presented to the committee was considered.
- (46) In considering the applications for the special licences, the committee had particular regard to the provisions of section 142 of the Sale and Supply of Alcohol Act 2012.

- (47) There were no objections from the agencies regarding the suitability of the premises, the hours that were sought nor the events that were being promoted. The committee agreed that these were not issues of concern.
- (48) The premises at 22 Harewood Road are purpose built to conduct the business of selling alcohol. It also falls within the City Plan which allows such activity to be conducted from these premises. The times sought for the events mean that they are required to be finished by 1am the following day. This time does not seem unreasonable and is less than the hours allowed under the Sale and Supply of Alcohol Act 2012 of 4am.
- (49) There is no LAP for Christchurch City . The recommendation from the Licensing Inspector to grant a “Special Licence” to 1am, as a matter of course, seems reasonable to this committee.
- (50) The applicant for these events is either Mr Yee or Ms Boote. They are both suitable applicants but in reality are the agent for the event seeking the licence. On each occasion these events meet the criteria under Section 142 (1)(b) of the Act to be granted a Special Licence.
- (51) The committee makes the point that it is for the applicant to demonstrate that they are suitable to hold a licensed event. To do so they must satisfy the Committee that they meet the requirements of section 142 of the Act. We note that the Management of Club 22 has been an issue previously.
- (52) It would have been helpful to have heard evidence from Mr Miller, who was to be the manager at four of these events to reassure the committee of his experience within the industry and the manner in which he would manage these events.
- (53) Ms Boote, although young, has gained some experience since her initial introduction to the liquor industry. These type of events are substantially different to manage than the operation of a night club. Ms Boote did understand her responsibilities but her knowledge of some of the requirements of the Act were still deficient. She was honest in her answers but should consider keeping substantial training and briefing plans and accurate training records as a matter of good practice.

Section 142 (1) (h)

In deciding whether to issue a special licence , the licensing committee concerned must have regard to the following matters

(h) whether the applicant has appropriate systems, staff and training to comply with the law

- (54) The lack of understanding of the Sale and Supply of Alcohol Act 2012, was also evident in the evidence from both the applicants in respect to allowing alcohol to be bought to and consumed at organised events at Club 22. The Act prevents such behaviour, making it an offence to do so.

Section 235 "Use of unlicensed premises as a place for consumption of alcohol"

A person who is the occupier, or has or takes part in the care, management, or control of any unlicensed premises commits an offence if that person allows those premises to be kept or used as a place of resort for the consumption of alcohol

- (55) If Club 22 is to operate as a venue for hire it must comply with the legislation and it is the responsibility of the operators to ensure that they do so. To not do so goes to an applicant's suitability to hold such a licence.
- (56) The committee was also given evidence to consider concerning whether amenity and good order would be reduced if any or all of these licences were granted.

142 Criteria for issue of special licences

- *(1) In deciding whether to issue a special licence, the licensing committee concerned must have regard to the following matters: (e) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of the licence:*
- (57) No objections were raised by the agencies concerning the likely impact on good order in the vicinity by the holding of any of these events.
- (58) Eight objectors from the community wrote to the committee expressing concern about granting a special licence to Club 22.
- (59) It was determined that all of these objectors had a "greater interest" within the meaning of Section 140 of the Act because of the proximity of their address to the applicant premises. The Committee took note of these objectors, but more particularly those who attended the hearing and gave evidence to the committee.
- (60) The committee took into account the previous running of these premises. One issue raised by the objectors was the suitability of the parties involved in Club 22. Some of these individuals are still involved in the applications before the committee.
- (61) The applicants addressed this issue to the satisfaction of the committee and the fact that the premises are not intended to be run as a night club has been taken in to account.

In Page v Police (unreported HC v Christchurch AP 84/98 24 July 1998) Panckhurst J commented on the issue of suitability in this way.

"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. That implies an onus upon the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of the particular case: for example, the place, the intended business (here in a difficult central city location), the nature of the business itself, the hours of operation and the intended activities, provide the basis for the assessment of the individual."

- (62) The objectors detailed the problems that had previously existed when club 22 operated as a Night Club. All the objectors agreed that since these premises had closed the problems had ceased. They were concerned that things may return to the "Bad old days".
- (63) The only concern they had that could be attributed to the operation of Club 22 recently, was an increase in noise levels from some of the events. The Licensing Inspector gave evidence that while four noise complaints had been received on the 15th March 2014, none had been upheld. There have been no other complaints made to the council.
- (64) The Police advised the committee that they had no complaints concerning the special events run by Club 22, except for the motor cycle event held on the 3rd August 2013.

Pohia Saltwater 2001 Ltd LLA PH 3911/201

"The issue of excessive noise is a reflection of bad management and it is the responsibility of Management to work towards mitigating excessive noise. "

- (65) Mr Yee gave evidence that his plan for events includes ensuring people do not drink outside and the doors are kept closed. He was disappointed that Ms Howley went to Club 22 on the evening of the 15th March after being disturbed by the noise and saw that the doors were open and people were outside. He understood the problem.

Pohia Saltwater 2001 Ltd LLA PH 3911/201.

"We will always give full credit to those holders who acknowledge any existing noise problem and try and do something about it. In our view the term 'host responsibility' does not exclude the people who live nearby."

Many licensed premises have shown that they can operate in harmony with their residential neighbours. It is no coincidence that the managers and owners of such premises also show a commitment to the reduction of liquor abuse."

- (66) The objectors and the applicants had a discussion during the hearing concerning the need to reduce noise and to be able to communicate with each other regarding those concerns. The committee encourages this effort to have licensed premises operate in a collaborative way with the community. It is hoped that this will help overcome the neighbourhood concerns regarding noise.
- (67) While the number of events and the nature of the event could affect the amount of noise coming from Club 22, this is something to consider in the future.
- (68) The committee did not believe from the evidence given that noise could be considered a disruption of good order, more than to a minor extent at present and should not prevent the granting of these licences.
- (69) The final issue considered by the committee, was the submission made on behalf of the Christchurch Medical Officer of Health and the Police.

(70) Both these submissions were in essence that the premises were being advertised as a function centre available for hire and that the number of Special Licences being granted was inappropriate and that an on-licence should be applied for in respect to Club 22.

(71) Over a period of nine months (including the 5 current applications), 18 applications for a Special Licence have been made in respect to Club 22.

Section 41 of the Sale and Supply of Alcohol Act 2012

A special licence must not be issued in circumstances where (in the opinion of the licensing committee concerned) it would have been more appropriate for the applicant to apply for –

An on-licence, off-licence-or club licence.

(72) On each occasion an application for a special licence is made it transfers a unlicensed premises to licensed. As opposed to an existing licensed premises that may be seeking a special licence to extend their hours for a special function.

(73) The police submitted that :

“Continuing to issue special licences to the Club 22 premises is in effect allowing the applicants to circumvent the in-depth “on Licence” application process.”

(74) AND

“the threshold for obtaining an on-licence and the corresponding responsibilities and expectations of the licensee from both the community and monitoring agencies is higher than for a special licence.”

(75) To assist the committee the licensing Inspector gave evidence that under the old and now obsolete Christchurch Alcohol Policy their cut off point was 20 special licences.

“their cut off point at 20 days of special licences as being the point where such a review was required.”

(76) Mr Ferguson submitted that that number had not yet been reached.

(77) Mr Yee gave evidence to the committee that he was facilitating the hire of Club 22 and that he would take bookings to meet the demand from the community. He said that he did not want to do back to back functions, but agreed when questioned by Ms Howley, that there might be occasions where he could take a booking for a Thursday, Friday and Saturday night events.

(78) Mr Yee also told the committee that he also had four additional bookings that he had not yet confirmed and would wait until after the decision at this hearing.

In Police V Franklin District Licensing Agency LLA 1813/92 The Authority reminded Agencies that special licences were not to be issued that gave applicants the same, similar, or even greater hours than those sanctioned in a permanent licence.

(79) An issue for the committee to weigh was whether the applications as they stood, plus the ones which had been previously granted, gave rise to the belief that the special licences being applied for were being used to facilitate the running of a premise under special licences rather than a substantive on licence and thus circumnavigating the intent of the Act and bringing the regime into disrepute.

(80) That threshold, in the eyes of the committee has not yet been attained but maybe an issue in the future.

Conclusion

(81) The committee concludes that the requirements of Section 142 of the Sale and Supply of Alcohol Act 2012 have been met in all these applications before it.

(82) It grants the special licences applied for .

A handwritten signature in blue ink, appearing to read 'G. Buchanan', written in a cursive style.

Mr G Buchanan
Chairman