

Decision No. 60B [2017] 1361

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 **Taj Liquor Store Limited** in respect of premises at **304 Selwyn Street, Christchurch**, known as **Bottle Store On Selwyn Street**.

RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: P R Rogers

Members: Mr D Blackwell QSM and Mr R Wilson JP

HEARING at Christchurch on the 1 May 2017

PRESENT:

- Armarjit Singh** – On behalf of the applicant
- Andrew Riches** – Counsel for applicant
- Jennifer Davison** – Licensing Inspector – to assist
- Constable Adrienne Jones** – NZ Police – in opposition
- Helen Barbour** – On behalf of the Medical Officer of Health – in opposition
- Jo Robertson** – Objector on behalf of Addington School Board of Trustees
- Sonya Hodder** – Objector, Spreydon Neighbourhood Network
- Philip Wood** – Representing himself
- Phil Hughes** – Regional Manager Bottle O
- Janet Anderson** – Committee Adviser

INTRODUCTION

[1] This matter concerns an application by Taj Liquor Store Limited for a new Off-licence at 304 Selwyn Street, Christchurch, to be known as Bottle Store On Selwyn Street.

[2] The NZ Police and the Medical Officer of Health (MOH) were in opposition to the application with the Licensing Inspector not opposing the application and there to assist. These three organisations will be referred to as The Agencies.

[3] There were a large number of objections to the granting of the licence, but on the day of the Hearing only a representative of Addington School Board of Trustees, the local Residents' Association and the owner of a nearby block of shops appeared as Objectors.

[4] The parties to the proceedings were identified. An explanation was given that the applicant would give his evidence in support of his application followed by the Agencies, then the Objectors. Members of the Committee could ask questions at any time and witnesses could be cross-examined by the other parties.

THE HEARING

Evidence of Applicant

[5] The applicant Armarjit Singh gave evidence of being a director of Taj Liquor Store Limited and a co-shareholder in the company with his wife, who was present at the Hearing but did not take part.

[6] The applicant read from a lengthy and well-constructed brief. It detailed his experience running a bottle shop in Ashburton up until November 2016. For various reason he sold this business intending to establish a bottle shop in Christchurch. He said he had no incidents or problems in Ashburton involving the Agencies and ran a profitable business.

[7] The applicant said he had been on the look-out for a suitable location in Christchurch and came across a block of new shops in Selwyn Street near the corner of Brougham Street. He saw it as being a developing area, as a result of rebuilding that was taking place after the earthquakes.

[8] He indicated the security arrangements with extensive use of CTV cameras and did not believe this was an area where people would loiter. He commented that it was very close to an existing On-licence called the Celtic Arms, which in his opinion did not appear to have negatively impacted on the area.

[9] He stated he was currently in the process of entering into an agreement the Bottle O franchise and that the premises will be operated as a Bottle O branded store. The store will have a chiller at the rear where RTD's and beer will be located and in the middle of the store the wine and spirits. He said he would not be selling individual cans or bottles of beer and the like.

[10] The applicant stated he would employ an outside contractor called Employ Sure, which provides assistance in running a small business. Likewise he said Bottle O would provide assistance as part of the franchise arrangement. This will include staff training and education. Mr Singh said his wife Tarjinder would also be working in the shop and had previously worked at a supermarket responsible for Off-licence sales.

[11] The applicant's brief then covered the concerns of the objectors and he listed these under a number of headings. These included location and a comment that he was hoping to pick up passing traffic. There were no obvious areas for loitering in the close vicinity. He did not accept that the presence of the store would have an adverse effect on children or their families, as at the time they were leaving school the shop would not be busy.

[12] He went on to say that there would be no advertising on the footpath or in the window other than the Bottle O branding. He pointed out that they already had to walk past a "pub" and the school age children would not be impacted. He said a number of objections raised the fact that there is a Salvation Army Drug and Alcohol Rehabilitation Centre nearby, however this was approximately 750 metres away and the Brougham Street expressway has to be crossed to reach the store. Conversely there are two Off-licenses closer to the Salvation Army Centre for patrons to buy their alcohol. He had met with the Director of the Salvation Army Centre to discuss the operation of the store.

[13] There was reference from the objectors to a Rehabilitation Centre at the back of the proposed bottle store. He had attempted to contact this facility called Pathway but representatives from this organisation had failed to respond to his call. In particular he attempted to have a meeting with the owner of a business in nearby shops called Oh Well and this person did not wish to meet with him.

[14] The applicant addressed the issue of vandalism and failed to see that his store could possibly increase the likelihood of vandalism to the shops in the area. He stated that it would be well lit until 10 pm. He commented on the On-Licence nearby and stated that as far as he knew this had not caused an increase in vandalism.

[15] The applicant then addressed the issue of the vulnerability of the area as it had been classified broadly as low socio economic. However he said his focus was not selling alcohol to the immediate community but to the commuter traffic passing through on Brougham Street. He said the nature of his business is not discount liquor and the the prices are set nationally for the products supplied by the Bottle O franchise.

[16] He said if he saw any persons coming into the shop who gave the appearance of struggling with alcohol addiction or obvious intoxication then they would be barred from purchasing alcohol in the store.

[17] In conclusion the applicant stated he had previously successfully operated an Off-licence premise and had identified a location that would cater broadly to the commuter traffic rather than the nearby community. He understood the concerns of the community and wished to work with them and gain their trust.

Cross Examination

[18] He was asked by the Police about his policy regarding sales to school children and responded there would be no sales to any school children in school uniform. The representative of the Medical Officer of Health (MOH) asked what signage there would be and the applicant stated it would be just a sandwich board with the words Bottle Store Open and/or a flag. When asked if all the staff would get a licence controller qualification (LCQ) he said he would help them do that. When asked about selling to underage persons he said there would be a till prompt showing a date to allow staff to calculate the age from the date of birth supplied by the purchaser.

[19] On the question of parking he said there were four parks out on the street and two at the back of the shop. He agreed he could put a CTV camera round the back of the shop and the TV monitor would have automated views from the cameras used.

[20] Ms Robertson representing the Addington School Board of Trustees asked the applicant did he know that Addington School was a decile three area. The applicant seemed unsure of this.

[21] The Committee confirmed that there would be just the bottle store open sign with no signage on the window and the applicant confirmed this was correct.

Evidence of Mr Hughes

[22] Mr Hughes explained he was the regional manager for Tasman Liquor and the Bottle O franchise. He said there was a standard layout for all stores with RTD's etc in a chiller at the rear of the store. He said that to maintain standards across the Bottle O franchise each store was audited every month and confirmed that during the time Mr Singh ran the Ashburton store there were no issues, particularly around serving under age minors and intoxication.

[23] He explained that Bottle O had a national pricing scheme so all stores had the same prices on their products.

Cross Examination

[24] The Police enquired how specials would be displayed and Mr Hughes explained that there would be ticketed specials, in other words tickets would be a different colour reflecting the special price, with some A4 advertising within the store. He said normally there would be what he called snap frames on the window of an A4 poster size advertising the special. It was put to him that the applicant had said that he would not have advertising on the window and Mr Hughes advised that they could work within the licensed conditions.

[25] He said store owners have access to on-line training and an income stream that comes to them as a result of compliance. The Constable put it to the witness did he mean a financial penalty for non-compliance and he replied yes.

[26] Under questioning from the MOH the witness admitted that the Bottle O range was limited to 300 to 350 products. He went on to say there could be up to about a total of 1000 products in the store and these additional products were at the control of the individual manager. They would be displayed as manager's specials and this would be a matter

between the company that he bought the product from and the licensee's individual discretion when setting the discount.

[27] Questions from the Committee confirmed that if 300 to 350 products related to the Bottle O range then about two thirds, being the remainder of the products, were not controlled by the Bottle O pricing structure. He replied that was correct but the Bottle O products are the larger volume sales. The remaining products tended not to be high volume.

Evidence of MOH

[28] Ms Barbour gave evidence on behalf of the MOH. She stated the MOH had opposed this application in the belief there was a significant additional risk to the amenity and good order of the locality, should the licence be granted. She produced a number of maps and one in particular showed the store with a 500 metre area immediately around the store.

[29] The witness stated that the New Zealand Census 2013 showed that within the 500 metre radius there were 4785 people and the medium deprivation had a rating of 8. There were two off-licenses within a 1 km radius. She referred the Committee to research carried out by *Connor JL, Kypri K, Bell ML, Cousins K (2011) Alcohol outlet density, levels of drinking and alcohol related harm in NZ: a national study.*

[30] She also referred the Committee to research by *Huckle T, Huakau J, Sweetsur P, Hulsman O, Casswell S. (2008) Density of alcohol outlets and teenage drinking.* She stated this supports the view of the Canterbury District Health Board and the MOH that the more alcohol that is made available, then the more excess alcohol would be consumed and therefore the more harm would be experienced by that population.

[31] She went on to say the concerns of the MOH with regard to Off-licenses especially in deprived areas are the element of control. With an Off-licence all control stops at the premise door. She contrasted this to On-licence premises where there is a required procedure in place to minimise the risk of alcohol related harm.

Cross Examination

[32] Counsel cross examined Ms Barbour about the reports she had produced and she replied she had produced them for the information of the Committee and to reflect the view of the Medical Officer of Health, She could not comment on the findings of the report. She agreed that the *Connor* report found there was no correlation between alcohol abuse and density of bottle stores but there did seem to be a statistically significant association between density, binge drinking and Off-licences, On-licenses and Clubs. When it was put to her, that the area in question was not a high density area for Off-licenses she agreed that was correct.

Evidence from Objectors

[33] Ms Robertson gave evidence saying that she worked in an organisation, in a liaison role called Cross Over Trust in conjunction with the Addington School whilst also being a member of the school board. She referred the Committee to s. 106(b) of the Act and the impact of issuing the licence and the way it will affect the amenity and good order of their locality, particularly the use of the land when the area is predominantly families, the general community and schools in the area.

[34] She worked within the school with at risk children and families. She said that most of the children that go to her school live within 500 metres and walk to school. Some of them walking through the area of Selwyn Street where it is suggested the bottle store will be sited as a result see the signage that is associated to a bottle store. She described this as a fragile school area and with about 20 children from 10 families that suffer with alcohol addiction problems. These families do not need an outlet for alcohol close to them and she pointed out, as the MOH had, that the store owner can't monitor who is going into the store and whether they are from the community rather than persons driving past.

[35] The witness said the children that she sees have a lot of experience of alcohol and none of that experience is a good experience. She went on to list the schools and churches in the area. The children would walk past the shop and see signs and pictures of alcohol and research has shown that this can affect young people.

[36] The witness went on to say that amenity and good order is more than about noise, graffiti and litter, it about the wellbeing of children. The availability of alcohol right in front of the parents on a daily basis, is going to impact the good order of our locality for our children.

Cross Examination

[37] The Constable asked the witness to explain her role at the Cross Over Trust. She replied that it was a liaison role; she could be in the school yard as she was based in the school. She assisted the families in the area and this could be over a range of issues including assisting in court appearances. She said the issue of an Off-licence would only increase the availability of alcohol to parents and guardians and raise the already high level of violence in the home.

[38] Counsel in cross-examination put it to the witness that the applicant had given evidence that he would not be focussing on selling to the immediate area. It had been said that the applicant's main customers were patrons passing through the area. The witness replied she did not see how he would know where his customers would come from. Counsel put it to the witness that she was opposed in any circumstances to the issuing of an alcohol licence and she replied yes, as it has an impact on children and their future drinking.

[39] The Inspector pointed out to the witness that the points she had been making under section 106, fitted more under the object of the Act where it talks about alcohol related harm that can be of many types, the witness said this was correct.

[40] The Constable enquired as to the witness's role at the school and she replied she was employed by both the school and the Cross Over Trust in a joint role; a pastoral role with families, and as a result she comes across many problems in the community. She said in many of the families alcohol is a drug but without calling the parents addicts. She went on to say it is the alcohol that the parents purchase and bring home that causes the problem.

[41] Counsel for the applicant put it to the witness that at an Off-licence people are not drinking in the street they are leaving the area. The witness agreed but said they won't be leaving the area; they live in the area.

[42] Counsel put to the witness that a lot of the families she had concerns about were in the vicinity of the Salvation Army and while she replied yes, it was not the main focus of her

objection which was more about the fragile condition of the whole community. It was put to the witness that the areas close to the Salvation Army were closer to a bottle store on Lincoln Road than they would be to the store in question. The witness agreed this is the more deprived area within the 500 metres circle and that further south are the more affluent areas. It was put to the witness that she was opposed to any alcohol reference at all in the window of the shop and she replied yes she was.

Evidence of Ms Hodder

[43] Ms Hodder gave evidence on behalf of the Spreydon Neighbourhood Network group and explained that there are twelve members active in the group, and about seventy that received information from her group. She believed that there are about 3000 residents in the group's area. Her concerns are the schools in the area and there are vulnerable persons in the community. There were also organisations treating and supporting those with alcohol problems.

[44] Her concerns were about the neighbourhood and that there were already vagrants sitting in the park drinking close to the proposed location of the store.

[45] In cross examination Counsel put it to her that her concerns were about organisations that she had listed in her objection and that those organisations had not lodged objections. She agreed that was correct. It was put to her that she did not have a lot to add to what was said on behalf of Addington school namely that the concern was not the drinking out on the street but that alcohol would be taken home. Ms Hodder agreed that this was definitely the case.

[46] The Committee enquired as to the setup of the group and confirmed it was a residents' group.

Evidence of Mr Wood

[47] Mr Wood gave evidence of building and owning the block of shops immediately south of the premises in question and so he had an interest in seeing them prosper. He said he held out for quite a few months not wanting to sell or lease to a business that would become a target for crime in the area. He had received a number of applications for a bottle store but (in his words) it becomes the number one target for crime and he refused to sign a lease.

[48] He leased one of the shops to a business that carried out occupational health drug and alcohol testing. In their lease document they specifically requested to him that the other shops would not be liquor stores. The witness said in his view having a bottle store next door is incompatible with existing neighbours. He said behind his shop was an addiction treatment facility run by the DHB and other organisations involved in the treatment and care of people with alcohol and drug addiction problems. As a result the last thing they need is an Off-licence over the fence.

[49] The witness then went on to outline the problems he had had over vandalism over the years and how they would increase if this application went ahead. He said his shop is on the same driveway as the proposed premises and he did not want people parking behind the building to pre load before they go into the nearby tavern. To prevent this a gate had been put up.

[50] Mr Wood produced a copy of a newspaper article in the Sunday Star Times published on the 8 August 2012 stating that serious violent crime doubles within 900 metres of a liquor outlet. The national study looked at various facts one of which was the greater the distance to travel the lower the rate of serious crime.

[51] The witness criticised the applicant's assertion that he could work with other shops and organisations in the area. He had concerns about the community and property damage as this will no doubt increase. He said the crime rate will increase as shown by studies. He considered the effects of this proposal on the environment would be negative and more than minor, and that therefore a licence should not be granted.

Cross Examination

[52] Under cross examination by the Inspector he admitted that he had never seen persons pre-loading in the area. He also had never lodged any objection to the Celtic Arms On-licence.

[53] The police asked him about his concerns over vandalism and he replied his chief concern was etching of the windows as it was costly to repair. When told that the applicant had said he would have cameras he replied he had cameras on his shops but they were ineffective as the offenders were careful not to be identified by wearing "hoodies" etc. He said if the wrong people are attracted to the area crime could very well increase.

[54] The Constable asked the witness about the gate between the two blocks of shops and he said it was locked with a combination lock when the last person leaves from the various shops. He did not believe the rear carpark was suitable for customer parking. The MOH asked has there been trouble in the carpark and the witness replied not since the gate went in.

[55] Counsel for the applicant questioned the witness concerning the gate and problems round the back of the shops and tenants leaving the gate open. It was put to the witness that if the applicant shut the gate, it might solve these problems, in particular persons urinating round the back. The witness agreed when it was put to him that those problems were attributable to a nearby On-licence as far as he knew.

[56] The witness was asked whether his objection was in part as a result of his loyalty to the proprietor of Oh Well, the alcohol and drug testing company. He responded that he also did not want to see high rates of crime in the area and wants to see the area improve and flourish.

[57] It was put to the witness that he was in breach of his lease with Oh Well not to have a liquor store nearby. He replied that this was his attitude after the tenant for Oh Well moved in; while having no control over it, he thought it would be incompatible with the rest of the shops around it.

Evidence of the Police

[58] The Inspector sought permission from the Committee to call Constable Jones to explain some of the issues the previous witness has raised around bottle stores and crime. The witness said she had been a member of the Alcohol Harm reduction Unit at Christchurch for 18 months. She said there is no hard evidence between bottle stores and crime as it is

difficult to study. There has been a recent spate in Christchurch of armed robberies of On-licence premises, dairies and garages. On-licence crime related to those premises with “poky machines” and the large amount of cash they can have on the premises at closing time. She had no information of robberies at Off-licence premises.

[59] A question from the Committee concerned information on graffiti and the constable replied they had little information as it is mainly reported to the City Council. The question was put “is this an area that caused some concern?” She replied it was difficult to answer, it a lower socio economic area, so they do have more crime, but it was like comparing Addington to Merivale.

[60] The Committee enquired whether there were concerns about the Celtic Arms and the constable replied they had not had any concerns. There was a complaint about drugs some 12 months ago but the premises themselves do not cause any problems.

Summing up

[61] In respect to the object of the Act, the Inspector drew the Committee’s attention to *Tony’s Liquor Upper Hutt Ltd [2014] NZARLA 253428*

[33] An applicant for a liquor licence must prove its case. The onus is on it.

She also referred us to ***Linwood Food Bar Limited v Davison and Ors*** [2014] NZHC 2980:

[18] My attention was also drawn to the purpose and object of the 2012 Act which applied to this application...importantly, as was emphasised in Venus NZ Ltd, the object in s. 4 of the 2012 Act differs from that contained in the 1989 Act in that the aim is now minimisation of alcohol related harm not merely its reduction. That means both the Authority and this Court, must have regard to reducing alcohol related-harm to the smallest amount, extent or degree, when making decisions on the grant of renewal of a licence.

Re Venus NZ Limited [2015] NZHC 1377.

[53] ... it seems to me that [the (sic)] question whether amenity and good order will not be materially reduced is one on which a judgement must be formed by the Authority, on the facts of a specific case, as opposed to something that an applicant is required to prove on the balance of probabilities. The difficulties inherent in proving a negative support that view.

[62] The Constable addressed the Committee stating that s. 105(e) was why they opposed, because of the layout and design of the store. As a plan had still not been produced to the Committee and if the Committee were to consider the issue of a licence, then they should include a condition that the plan be presented prior to issue of the licence for approval. She brought to the Committee’s attention the object of the Act and the harm to the community as brought out in the evidence of Ms. Robertson.

[63] Ms Barbour for the MOH said there was alcohol harm in this vulnerable community. The Committee should consider the risk of alcohol products to children in the home. She said that the applicant had given the actions he would take to mitigate the risk and described them as quite extensive. She said that the question of signage was up to the Committee’s discretion but had concerns that no layout had been submitted.

[64] Counsel commented that the cases referred to by the Inspector were quite helpful and brought to the Committee attention the *Eastern Foods* case where they adopted the test from *Cayman Holdings Limited* LLA PH 145/2001

[17] "The Authority's approach has been to satisfy itself that the applicant is suitable and will uphold the law. The Police or District Licensing Agency Inspector are empowered to apply to vary, suspend or cancel a licence pursuant to s.132 of the Act if problems arise. Apprehension of problems alone is not sufficient to prevent a suitable applicant, particularly one supported by a District Licensing Inspector and the Police from exercising rights granted by the District Council."

[65] There has been no opposition as to suitability in this matter so the main issue is the locality of the area. Counsel went on to say some of the matters brought up in the Hearing were very speculative and not based on hard evidence.

[66] The matter of the On-licence in the area and information related to that had been very scant. In fact the location has an existing On-licence and that could be seen as a test for the vulnerability of the community, but no evidence has been adduced of this.

[67] Counsel put it to the Committee that what had come out of the Hearing was not that people would come out of the shop and be intoxicated, it was the harm alcohol would cause to people in the area. This was not tenable and simply because a bottle store is in the area, it is not going to cause immediate crime in the area. This was borne out by the police being unable to draw out any particular concerns about the location of this bottle store.

[68] Counsel submitted the evidence of Ms Robertson was quite general and mainly on the evils of alcohol rather than any particular concerns about the shop itself or the applicant. The evidence of Ms Robertson, while coming from a very legitimate perspective, had failed to show a causal nexus between the placement of the bottle stores and any harm in the community, in fact she was opposed to any alcohol in the area.

[69] Counsel said the applicant would be prepared to accept as a condition of the licence that there be no visible advertising on the street and that was always his intention. Counsel raised the matter that objectors had concerns about the alcohol treatment organisations in the area. He noted that the organisations themselves had not seen fit to come along to the Hearing and give evidence.

[70] Counsel submitted that the largest issue to address was the deprivation of the area. The northern part of the area, where the Salvation Army is based, is a deprived area and unfortunately it finds itself equally distant from Lincoln Road which already has bottle stores and a number of On-licenses. His submission was that another store an equal distance away will have minimal impact on the harm that may exist in that area if at all. This would make alcohol available to the community in the area that has the lowest deprivation.

[71] Counsel commented on the skills of the applicant having previously owned a bottle store. He touched on the comment of the MOH concerning the range of alcoholic products and said this was not by volume of sales it was by brand. The evidence from Mr Hughes was that the high demand products would be coming from the Bottle O range so there would be no concerns of a possible price war.

[72] Counsel submitted that a lot of the evidence of Mr Wood was as a result of loyalty to his tenants while grappling with a number of issues, such as urination and vandalism in the area. These matters have no connection with the bottle store.

[73] He said the information supplied by MOH, namely the *Huckle* report on density of bottle stores and the impact this has on alcohol and teenage drinking, involved a census of households with teenagers and asked them some questions and carried out other investigations; in any event Counsel concluded the report was flawed and used complicated formulas to produce a result.

[74] Counsel touched on the *Connor* report but they effectively came to the conclusion that the density of alcohol outlets has no connection to the consumption of alcohol in any given year, but it may have some effect on binge drinking. It was submitted there was no causal nexus, as the placing of the bottle store at this location wouldn't cause any increase in the harm in the area.

[75] Counsel concluded that today's Hearing had been about national problems concerning alcohol harm and the evils of alcohol and that the Committee should take a step back and look at this application and the location where the premises are to be located.

That ended the Hearing.

DECISION

[76] All the evidence presented to the Committee was considered, and the Committee had regards to the various sections of the Act. In particular the sections listed below:

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).

Section 105 - Criteria for issue of a licence:

(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.

Section 106 - Considering effects of issue or renewal of licence on amenity and good order of locality

(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—

- (a) the following matters (as they relate to the locality):
 - (i) current, and possible future, noise levels:
 - (ii) current, and possible future, levels of nuisance and vandalism:
 - (iii) the number of premises for which licences of the kind concerned are already held; and
- (b) the extent to which the following purposes are compatible:
 - (i) the purposes for which land near the premises concerned is used:
 - (i) the purposes for which those premises will be used if the licence is issued.

(2) In forming for the purposes of section 131(1) (b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a

refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):

- (a) current, and possible future, noise levels:
- (b) current, and possible future, levels of nuisance and vandalism.

Section 3(2) The purpose of the Act.

The characteristics of the new system are that—

- (a) it is reasonable; and
- (b) its administration helps to achieve the object of this Act.

CONSIDERATIONS

[77] At the Hearing Mr Singh, the applicant, presented a well prepared brief of evidence which was read to the Committee. The applicant detailed his previous experience, suitability, the location of the store, the way it was to be managed and the concerns of the objectors. These included but were not limited to location, vandalism, any increase in crime, the vulnerability of the area, and the struggle some families have with alcohol.

[78] The MOH representative gave evidence that it was the view of the MOH that another Off-Licence in the area would significantly increase the risk of alcohol harm and affect the amenity and good order of the area to more than a minor extent.

[79] Looking at the issue raised by the MOH, the Committee turned its mind to *Re Venus NZ Limited* [2015] NZHC 1377.

[53] ... it seems to me that [the (sic)] question whether amenity and good order will not be materially reduced is one on which a judgement must be formed by the Authority, on the facts of a specific case, as opposed to something that an applicant is required to prove on the balance of probabilities. The difficulties inherent in proving a negative support that view.

[80] After due consideration of the evidence the Committee does not support the view of the MOH. There was little evidence produced that would result in a significant increase in alcohol related harm nor was there any evidence that the amenity and good order would be affected by more than a minor extent, particularly in light of the On-licence in the immediate area.

[81] In regard to the evidence of Ms Robertson from Addington School Board of Trustees the Committee accepts that she is obviously at the “coal face” of problems caused by alcohol in the home and the impact on children’s schooling. In her role with the Cross Over Trust working within the school, she was in a unique position to see the problems of alcohol abuse in the home. She gave very compelling evidence, but it has to be said from a narrow perspective, of the negative effects of alcohol in the number of homes in the 500 metre radius of the proposed premises.

[82] While clearly it is a deprived area within this radius, it is not uniform across the whole area. Distorting the figures is the presence, in the north-western quadrant and just out of the 500 metre radius, of an area on Lincoln Road which has grown exponentially since the earthquakes of 2010 and 2011. With a large number of bars and restaurants including two

Off-licenses in close proximity to this most highly deprived area, people are drawn from that area towards Lincoln Road. Likewise, the Brougham Street Expressway effectively splits the area in two, with the more affluent area (relatively) on the southern side of the expressway and this has created a barrier for pedestrian movement.

[83] The witness Ms Robertson attempted to interpret the issue of the licence and the effect it could have on the wider community. It appeared to the Committee that what she was addressing was the perceived (by her) shortfalls in the new Act and was focussing on what the Committee sees as more a national issue. The Committee with regret does not accept this view as it believes it is not what was intended by the legislation and would be unreasonable under s. 3(2) of the Act to prevent an applicant from carrying out a business which he would otherwise be lawfully entitled to do under this Act.

[84] The witness Mr Wood gave evidence of wilful damage, namely the etching of glass shop windows in the area and urination behind the block of shops on either side of the joint driveway. He agreed this has been solved by putting a gate across the drive with a combination lock. He also claimed that having a bottle shop in the area would not be in keeping with how he saw the shopping area developing as more shops were rebuilt. After hearing the evidence the Committee was of the opinion that, while sincerely held, the views of this witness were to some extent self-serving and in particular the undertaking he had given in a lease to the Oh Well business not to have a bottle shop in his block of shops.

[85] The Licensing Inspector did not oppose this application and in relation to amenity and good order made the comment in her report at the bottom of page 4 relating to s.105(1)(h): *"In my opinion the amenity good order and of this locality will not to be reduced by more than a minor amount should this a licence be granted."*

[86] Concerning the question on page 7 of her report, Is the amenity and good order or the locality already so badly affected by the effects of current licences in the area.....: She has written *"There are no premises in this area that have an effect on the amenity and good order of the locality."* From the evidence we heard we agree with these two statements.

[87] In making its decision the Committee has considered the appropriate sections of the Sale and Supply of Alcohol Act 2012 and as a starting point we should look at the object of the Act. To paraphrase the object of the Act; it should be undertaken safely and responsibly and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised. Sub section 2 lists the types of harms that are envisaged under the Act and in particular in relation to this application, sub section 2(b), refers to any harm to society generally or the community directly or indirectly caused, or indirectly contributing by any crime, damage, death, disease, disorderly behaviour, illness or injury of a kind described in paragraph (a). We did not see any direct evidence that would sway the Committee to a view that the intent and purpose of this section was being breached.

[88] In this Hearing the main issue was largely about the meaning and focus of s. 105(1)(h) and the application of s.106 to this particular subsection. Looking at s.105 (1)(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.*

[89] Dealing now with the existing amenity and good order of the area, the Celtic Arms has been in that location for many years and when asked, the objectors had not objected to

renewals of its licence. Likewise it did not appear on the Agencies radar. It seemed to the Committee the presence of this establishment, in close proximity to the premises in question, whilst discussed at the Hearing was in our view glossed over to the extent that it was the “elephant in the room”.

[90] As pointed out in *R V Venus* judgement (para [79], the Committee on the evidence produced before it, (rather than an applicant being required to prove on the balance of probabilities), is required to balance the evidence it hears and form an opinion as to the key question, will the amenity and good order of the locality be reduced by more than a minor extent? We think not.

[91] Dealing with s. 4(1)(a) of the Act. The sale, supply and consumption of alcohol should be undertaken safely and responsibly and in this instance as this is an Off-licence, it is the view of the Committee that it is primarily the sale of alcohol that should be considered. The Act does not give any indication whatsoever that in relation to an Off-Licence the licensee has any responsibility to consider the harms that may occur concerning the inappropriate consumption of alcohol in the private home or the wider community.

[92] Looking at s. 105, the criteria for issue of a licence; no concerns were expressed concerning the suitability of the applicant, there were no other issues raised under s. 105 at the Hearing other than the proposed layout of the premises which will be dealt with later in this Decision by way of an undertaking.

CONCLUSION

[93] The Committee, after hearing all the evidence was convinced that this application would not breach the object of the Act and that in relation to amenity and good order it would not affect the locality by more than a minor extent.

[94] While clearly the MOH and objectors would prefer not to see this licence issued, as stated previously, it is the view of the Committee that it should be issued having regard to section 3(2)(a) of the Act, namely that the stated intention of the legislation is that the system be reasonable. The Committee does not see that to refuse to grant the licence because of what may happen beyond the front door of the bottle shop would be reasonable.

[95] The licence can therefore be granted subject to the undertakings and conditions below.

UNDERTAKINGS

[96] Undertakings were given by the applicant that prior to the issue of the licence he would seek the approval of the Agencies in relation to the new layout of the premises.

[97] The applicant said that he was going to minimise the exposure of alcohol in the shop window and he gave an undertaking that there would be no advertising of branded alcohol products in the windows of his shop. This has been reflected in the discretionary conditions under s.117(b). The applicant has signed an undertaking to: “To take all reasonable steps to

ensure the gate accessing the rear of the building in which my premises is located is locked at sunset.

Section 116 (1) - Discretionary conditions

(a) the following steps must be taken by the licensee to ensure that the provisions of this Act relating to the sale and supply 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 by the licensee to ensure that the provisions of this 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.

Section 116 (2) - Compulsory conditions

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

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

Monday to Sunday, between the hours of 10am to 10pm

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

Section 117 - Other discretionary conditions

(a) 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.

(b) The advertising of branded alcohol products will not be placed on the front of the premises facing Selwyn Street.

Section 119 - Restricted or supervised areas (other)

The whole of the premises is designated as a supervised area.

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 license 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) –
 - ii)
 - (i) once, when the prospective buyer first commences the order process; and
 - (ii) again, immediately before the sale of alcohol is completed.

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 1 year.

THE LICENSED PREMISES

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

DATED at Christchurch this 7th day of May 2017.



P R Rogers

Chairperson

CHRISTCHURCH DISTRICT LICENSING COMMITTEE