

Decision Number: 60D [2020] 6841

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

AND

IN THE MATTER OF an application by **RIZAK ENTERPRISES LIMITED** for an **Off-Licence Renewal** pursuant to section 127 of the Act in respect of premises situated at **1/87 Main Road, Redcliffs, Christchurch**, known as **Redcliffs Fine Wines and Spirits**

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Ms C Robinson

Members: Mrs M Redstone JP
Ms A Keir

Appearances: Mr P Egden, Counsel for the applicant
Mr J Singh, the applicant
Mr H Little, District Licensing Inspector
Mr P Spang, assisting Mr Little
Constable Joliffe, to assist

DECISION ON APPLICATION FOR RENEWAL OF OFF-LICENCE

Background

[1] This is an application by Rizak Enterprises Limited ('the applicant') for a renewal of an Off-Licence pursuant to section 127 of the Sale and Supply of Alcohol Act 2012 ('the Act') in respect of premises situated at 1/87 Main Road, Redcliffs, Christchurch, known as Redcliffs Fine Wines and Spirits. The premises operate under an existing licence, which expired on 5 November 2020.¹ The application for renewal of the licence was made on 29 October 2020.

¹ 60/OFF/87/2019

[2] The general nature of the premises is that of a bottle store. The original application had attracted a significant number of public objections. Following a public hearing, the District Licensing Committee granted the licence subject to conditions (the 'original decision').² In addition to the conditions the original decision recorded a number of undertakings made by the director of the applicant company, Mr Jugraj Singh. The background to the application and a full description of the location is set out in the original decision.

[3] Of particular relevance to this renewal application were undertakings given in relation to:

(a) Mr Singh and Mrs Kahlon working from the premises for a period of 12 months.³

(b) No discounting or specials for RTD products.⁴

[4] There is an issue as to whether the applicant continued to meet the requirements of section 32 of the Act relating to the percentage of alcohol product to be sold. There is an issue as to whether the applicant complied with the requirements to notify 'the Agencies' of the appointment or changes of duty managers in accordance with section 231 of the Act.

[5] In the Committee's original decision, the Committee noted that the issue of the licence for a period of 12 months was generally considered a probationary period and indicated that the sales records would be reviewed to measure performance as against the business plan. The Committee asked the Inspector to report on compliance with undertakings.⁵

[6] The application was publicly notified on the Council's website from 29 October 2020 for a period of 15 working days. Significantly, no public objections were received. There is no objection from the NZ Police and from the Medical Officer for Health.

[7] The District Licensing Inspector, Mr Hamish Little, filed an initial Report setting out the background to the application and addresses the matters to which regard is to be had in section 105, 106 and 131 of the Act.⁶ The Inspector opposed the renewal of the application and recommended the application be considered at a public hearing. The Inspector signalled he may review his position depending on the applicant's evidence and recommend granting

² Decision No. 60D [2019] 1657

³ The original decision at [38] and [110].

⁴ The original decision at [29].

⁵ The original decision at [144].

⁶ Inspector's Report, 9 December 2020.

the renewal for a shorter duration. The Inspector provided a recommended set of conditions in the event the Committee decided to grant the renewal. The Inspector also filed a supplementary report updating the Committee on compliance checks and providing comparative pricing for other premises.⁷

[8] The particular concerns leading to the Inspector's opposition were that Mr Singh had not been working full time at the premises in the first 12-month period, and that he had on several occasions advertised RTD products as 'specials' in breach of undertakings given at the original hearing. There were further compliance issues identified, including that the applicant allegedly failed to file the 'Change of Manager' form for his own and his wife's appointments and had failed to provide information regarding sales when requested. The Inspector also noted that the applicant had stated that only 80% of sales were from alcohol products, which was contrary to the minimum threshold of 85% required by section 32 of the Act.

The hearing

[9] Mr Egden opened the case for the applicant and argued that there was no undertaking to work full time from the premises given at the original hearing, and that due to the consequences of the lockdown period and personal circumstances the applicant had done his best to be present at the premises. In terms of the advertising of RTD products, Mr Egden sought to draw a distinction between discounting RTD products and 'specials'.

[10] Mr Singh gave evidence and explained that he and his wife had shared responsibilities at the Redcliffs store until she travelled overseas to India with their children in February 2020. Due to the Covid-19 lockdown Mrs Kahlon had not been able to return until October 2020. During that time Mr Singh had managed the Redcliffs and his Papanui store with the assistance of a duty manager, Mr Jaskaran Singh, and a temporary manager.

[11] Mr Singh explained that he had understood that he had complied with the notice of change of manager requirements as he had provided details of his and his wife's roles when he made the original application, and then notified the Council when Jaskaran Singh became employed, when reminded about this.

[12] Mr Singh explained that he had not discounted or 'specialised' the RTD products but accepted that he had advertised them as 'specials' even though the price was not discounted.

⁷ Inspector's Supplementary Report, 18 February 2021.

When it was pointed out to him by the Inspector that created the wrong impression, he stopped advertising in this way. Mr Singh would like to advertise that he sells the RTD products such as premixed gin and tonic.

[13] Mr Singh said the reference to 80% alcohol sales was an error and he produced a letter from his accountant confirming his sales records for the year 1 January 2020 to 31 December 2020 to confirm that he met the 85% threshold.⁸

[14] The Inspector cross-examined Mr Singh on his attendance at the Redcliffs store, highlighting that on each occasion he visited the store for a compliance check he was not present. Mr Singh said he worked from Redcliffs in the late afternoon and evenings.

[15] The Inspector also questioned Mr Singh about the failure to lodge change of management forms to record his own and Mrs Kahlon's roles as managers. Mr Singh maintained his belief he had complied with the requirements.

[16] The Inspector also questioned Mr Singh's evidence that there had been no discounting of RTD products. Mr Little put to Mr Singh comparative figures from other stores that showed that in some cases Mr Singh's price was \$1-\$3 cheaper for some products. We did not find the comparisons to demonstrate any material concerns about discounting.

[17] In answer to questions from the Committee, Mr Singh explained his engagement with the local community since granting his licence. He said he had met with one of the objectors following the hearing and agreed not to sell cigarettes. He had also offered support to the local church and school events. Mr Singh had a good relationship with local businesses and was able to provide security footage to assist with local vandalism and break-ins at other businesses. We found Mr Singh to have a good knowledge of the local community.

[18] Mr Little answered questions about his report and maintained his concerns that Mr Singh had been in breach of undertakings not to discount or special RTD products and as an experienced licensee ought to have understood the requirements to give notice of changes and appointments of duty managers. At the conclusion of the hearing, Mr Little confirmed that against that background he would support a renewal of a period of one year.

⁸ Exhibit JS 3.

Evaluation and findings

[19] We are satisfied that the applicant has demonstrated that the requirements of section 32 are met and that at least 85% of retail sales are alcohol products.

[20] Our evaluation of whether the renewal application should be granted is made within the statutory framework set out below.

[21] Section 131(1) of the Act requires that:

In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

(a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):

(b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:

(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:

(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

(2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

[22] The relevant matters in section 105 are:

Criteria for issue of licences.

(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:

...

(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.

[23] The particular issues for this application relate to suitability including the manner in which alcohol (RTDs) has been advertised for sale.

Suitability

[24] The Inspector has called the applicant's suitability into question because of an alleged failure to comply with undertakings.

[25] In relation to the undertaking to work from the premises, the Committee is clear that the undertaking was not to work full time from Redcliffs because the applicant had explained at the original hearing that he had management responsibilities at his Papanui store. Our understanding of the original decision was that Mr Singh and his wife would work from the premises 'most of the time'. We accept Mr Singh's explanation that up until Mrs Kahlon travelled overseas they had endeavoured to share responsibilities to work from the Redcliffs store most of the time. There were only two visits from the Inspector prior to Mrs Singh going overseas which coincided with a time Mr Singh was not at the store, and then the store was closed due to the Level 4 lockdown until May 2020. Mr Singh produced duplicate sales receipts as evidence he was at the store at other times on those days and others.⁹ We accept that given the impacts of Covid 19 on all businesses and the personal circumstances of Mr Singh it was not possible for him to completely meet the expectation throughout the first 12 months. With the benefit of hindsight, the change in circumstances could have been communicated sooner, however, we do not find this to have adversely impacted on Mr Singh's suitability. To the contrary, despite the extraordinary circumstances that occurred Mr Singh demonstrated to us in answer to questions that he had a good knowledge and understanding of the local community, which was the rationale for the undertaking in the first place.¹⁰

⁹ Brief of Evidence J Singh, Attachment G.

¹⁰ The original decision, [110]

[26] In relation to the alleged failure to provide 'Change of Manager' forms, we found the additional notes in the application form relating to managers to be confusing as they do read as if it is only *changes* in managers that require a separate form.¹¹ We also find that the 'form' that the applicant is said to be required to fill out and submit is not actually required by the Act or regulations. We note that the requirement of section 231 of the Act is simply that that the licensee *notify the licensing committee and the Police* of the appointment, cancellation etc within 2 working days of the appointment. There is no set form of that notice required by the regulations. The personal information that the Council's 'form' requires is the information that a licensee is required to keep a record of under section 232 as specified in Sale and Supply of Alcohol Regulations 2013/459, Part 4, cl 24. There is no suggestion that section 232 record keeping requirements were not met. We think this is an issue of form over substance. There is no doubt that the licensing committee was advised in the original application that Mr Singh and Mrs Kahlon were to be duty managers, and the Police were provided with the application as a matter of course. The application form for a licence required by regulations requires that managers and proposed managers be named with the number and expiry date of their certificate to be recorded.¹²

[27] In relation to RTD sales, we note that the applicant accepts that he advertised RTD products in newspaper advertisements describing monthly "specials" on a number of occasions. Mr Singh accepts that he advertised the products as 'specials', but that they were not discounted prices, he simply wished to indicate he sold the product. The undertaking is clear as it refers both to discounting and specials. There seems to have been a misunderstanding by Mr Singh. Even if the price was not reduced from his usual retail price it is misleading to call it a special. We do not condone that practice. Mr Singh ceased doing this once he was alerted to the issue. There is nothing to stop Mr Singh from advertising on-line or in print media that he sells RTD products (subject to the undertaking not to sell products such as Nitro or Smirnoff Ice or any other alcohol products containing guarana and not sell single serve RTDs). The conditions of the licence do of course prevent advertising of alcohol attached to the exterior of, or visible from outside, the premises.

[28] Mr Egden requested that the undertaking be modified to enable Mr Singh to discount his RTD price in accordance with the market, but just not advertise that is the case.

¹¹ We also note that the form is described as being 'Notification of Management Change form' in the original application but in relation to the renewal application form it is described as 'Notification of Duty Manager appointment form.'

¹² Sale and Supply of Alcohol Regulations 2013/459 Schedule Form 4.

[29] We accept we cannot impose a condition to restrict the goods that Mr Singh is permitted by law to sell. The undertaking not to sell the named RTD products, single serve and not to discount or special others was important to the Committee to reduce the risk of targeting young drinkers.¹³ At the original hearing Mr Singh said there was not a market to sell RTDs cheaply. The applicant did not signal that change in position when the application for renewal was made and it appeared to be raised as an afterthought. We do not see any reason to revisit those findings and do not accept a modified undertaking. This decision is premised on the understanding that Mr Singh will continue to abide his original undertaking in relation to specials and discounts.

The manner in which alcohol has been advertised

[30] Aside from the issue addressed at [27] to [29] above, which have now been rectified and clarified, there are no other concerns about the manner in which alcohol has been sold or advertised.

The attitude of the Inspector

[31] Mr Little remained concerned about the failure to fill out the appointment of managers form and also concerned that there had been some discounting and advertising of RTDs as specials and for that reason he recommended a 1 year renewal period.

[32] We think the issue with the form filling does not reflect poorly on Mr Singh for the reasons set out above. If anything there has been a misunderstanding, and this is a misunderstanding that could have been corrected by clearer feedback and communication from the Inspector. In any event, Mr Singh has now completed the form the Inspector required.

[33] In terms of the discounts and specials for RTDs, Mr Singh appears to now understand the issue of concern. We do not accept a modified undertaking.

[34] In all other respects the applicant has been compliant during the first year, there are no concerns regarding amenity and good order or the management of the premises. We do not find it necessary to limit the duration of the renewal period.

¹³ The original decision at [29].

Conditions and Undertakings

[35] Aside from the request to modify the undertaking for discounts and specials, which we have rejected, Mr Singh did not resile from his undertakings given at the original hearing not to sell single serve RTDs or Nitro or Smirnoff Ice or any other products containing guarana. This decision is premised on those undertakings remaining in place. For the avoidance of doubt the undertaking in relation to Mr Singh and Mrs Kahlon working from the premises is no longer required.

[36] There is no request to vary any of the original conditions and we have not done.

Decision

[37] We are satisfied after standing back and evaluating all the matters placed before us and having had regard to the criteria as set out in section 105 (and informed by section 106) and section 131 of the Act that the granting of the application for renewal of the licence on the same terms and conditions achieves the purpose and objects of the Act.

[38] Accordingly, pursuant to section 130(1) of the Act we grant the application for a renewal of the On-licence for a period of 3 years subject to the following conditions:

The Licensed Premises

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

Discretionary conditions – section 116 (1)

- (b) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - (i) 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.
- (c) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:

- (i) Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.

Compulsory conditions – section 116 (2)

- (d) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.
- (e) Alcohol may only be sold or delivered on the following days and during the following hours:
 - (i) Monday to Sunday 9am to 9pm.
- (f) Water will be freely available to customers on the premises while alcohol is being supplied free as a sample on the premises.

Section 117 – Other Discretionary conditions

- (g) The licensee must operate the premises in general accordance with the Business Management Plan dated March 2019 and the evidence of Mr Jugraj Singh given at the hearing before the District Licensing Committee on 23 and 24 May 2019.
- (h) The licensee must implement and maintain the steps proposed in the Host Responsibility Policy contained within the Business Management Plan dated March 2019 aimed at promoting the responsible consumption of alcohol.
- (i) There shall be no advertising of alcohol attached to the exterior of, or visible from outside, the premises.
- (j) No flags or sandwich boards shall be used to advertise alcohol product for sale.
- (k) Signage is restricted to the Redcliffs Wine and Spirits logo and business name.
- (l) The licensee shall ensure that the Beachville Road and Main Road facades are screened with frosted glass to a minimum height of 1.5m measured from the footpath.
- (m) No alcohol product shall be stored or displayed against the Beachville Road interior glazed façade in a manner that is visible from the footpath on Beachville Road.
- (n) The licensee shall install CCTV security to operate inside and outside the store including any external storage areas.
- (o) Staff will check for litter daily in the general area and the Beachville Reserve and they will collect and dispose of any litter.

- (p) Any security grill shall be installed on the interior of the store.
- (q) The premises shall remain independent of any franchise arrangement and shall retain the name Redcliffs Fine Wines and Spirits.

Section 119 – Restricted or supervised areas (other)

- (r) The whole of the premises is designated as a supervised.

Other restrictions and requirements

- (s) Section 56 – Display of signs
- (t) Section 57 – Display of licences
- (u) Section 214 – Manager to be on duty at all times and responsible for compliance

[39] The licence shall be issued for 3 years.

[40] The applicant's attention is drawn to section 259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under the Act. Specifically, sections 46 to 63 and 231(1). The applicant must comply with all conditions specified on a licence.

DATED at CHRISTCHURCH this 8th day of April 2021



C E Robinson
Chairperson

Christchurch District Licensing Committee