

Decision Number: 60F [2022] 13744

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

AND

IN THE MATTER OF an application by **R & S LIMITED** for a renewal of an Off-Licence pursuant to s127 of the Sale and Supply of Alcohol Act 2012 in respect of premises situated at 9 Parnwell Street, Burwood, Christchurch, known as 'Thirsty Liquor Burwood'.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Committee: Mrs M Redstone JP (Chair)
Mr D Ivory
Mr G Clapp

CORRIGENDUM

[1] In decision **60F [2022] 13744**, dated 22 December 2022, at para [83](f), the District Licensing Committee recorded that:

Compulsory conditions – section 116(2)

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

(i) Monday to Saturday, between the hours of 9.00am and 8.00pm

[2] In its application the Applicant had sought hours of 10.00am to 10.00pm, seven days a week. At the hearing there was no discussion about a variation to opening hours and days. As such, the above is a typographical error.

[3] Accordingly, para [83](f) is therefore hereby corrected as follows;

Alcohol may only be sold or delivered the following days and during the following hours:

Monday to Sunday, between the hours of 10.00am and 10.00pm.

[4] In all other respects the decision remains unaltered.

DATED at Christchurch this 7th day of February 2023

A handwritten signature in black ink, appearing to read 'M. Redstone', written in a cursive style.

Mrs M. Redstone

Chairperson

Christchurch District Licensing Committee

Decision Number: 60F [2022] 13744

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

AND

IN THE MATTER OF an application by **R & S LIMITED** for renewal of an off-licence in respect of premises situated at **9 Parnwell Street, Burwood, Christchurch** known as **'Thirsty Liquor Burwood'**

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 7 November 2022 (at Christchurch)

DLC

Chairperson: Mrs Merelyn Redstone

Members: Mr David Ivory
Mr Greg Clapp

Appearances: Mr Andrew Riches on behalf of the Applicant
Mr Deepkumar Trivedi, Shareholder of the Applicant
Dr Liz Gordon on behalf of Ms Joanne Pera - Objector
Mrs Dianne Messenger - Objector
Ms Catherine Law - Witness for the Objector, Mrs Dianne Messenger
Ms Anneke Lavery, Licensing Inspector, to assist
Ms Paula Williams, on behalf of the Medical Officer of Health

Decision: 22 December 2022

Contents

Introduction	2
Submissions and Evidence	4
The Applicant.....	4
<i>Opening Submissions</i>	4
<i>Mr Deepkumar Trivedi</i>	5
The Objectors	8
<i>Mrs Dianne Messenger</i>	8
<i>Ms Catherine Law – Witness for the Objector</i>	9
<i>Opening Submissions on behalf of Objector, Ms Joanne Pera</i>	9
<i>Ms Joanne Pera</i>	10
General Discussion.....	10
Committee Visit to the Premises	10
Closing submissions.....	11
Closing Submissions of the Objector	11
Closing Submissions of the Applicant.....	11
Considerations of the Committee	12
Evaluation and findings	12
Criteria for issue of licences - s105.....	14
Amenity and Good Order.....	16
Manner of Selling and Display	17
Other Considerations of the Committee.....	17
Decision	18

Introduction

[1] This is an application by **R & S LIMITED** (**‘the Applicant’**) for renewal of an Off-Licence¹ pursuant to s127 of the Sale and Supply of Alcohol Act 2012 (**‘the Act’**) for premises situated at **9 Parnwell Street, Burwood, Christchurch** known as **‘Thirsty Liquor Burwood’**. The premises operate under an existing licence, which expired on 4 May 2022.

¹ 60/OFF/35/2019.

- [2] The application was received within 20 working days of the expiry of the current licence. This District Licensing Committee (**‘the Committee’**) granted a s208 waiver with respect to the late application, due to Covid-19 reasons on 12 April 2022.
- [3] The general nature of the premise is that of a **Bottle Store**.
- [4] The application was received by the Christchurch City Council Alcohol Licensing team on 12 April 2022 and was publicly notified on the same day. It remained on the website for a minimum of 15 working days. Four objections and one letter in support of the application were received.
- [5] The Applicant seeks to renew the Licence with the existing hours of:
- Monday to Sunday between the hours of 10.00am and 10.00pm.**
- [6] The licence was first granted following a change of ownership in May 2018 and renewed in May 2019 with no objections being received to the issuing of either the new or renewed licences.
- [7] The current renewal application was not opposed by the District Licensing Inspector,² the New Zealand Police or the Medical Officer of Health (**‘MOH’**).
- [8] A hearing of the application took place on 7 November 2022. The Police were granted leave to be excused from attending, on the basis that any questions that arose in the course of the hearing could be referred to them by way of memorandum. Ms Paula Williams, on behalf of the MOH, attended the hearing to assist. We heard evidence and submissions on behalf of both the Applicant and the objectors and one witness.
- [9] Following the hearing the Committee members undertook an external site visit on 9 November 2022, accompanied by Mr Luke Smeele, the Hearings Advisor.

² Inspector’s report, 26 August 2022.

Submissions and Evidence

The Applicant

Opening Submissions

[10] Mr Riches presented opening submissions for the Applicant. He highlighted the object of the Act and the functions of the Committee. He referred to *Medical Officer of Health Wellington Region v Lion Liquor Retail Limited*³:

"The factors to be considered in the course of assessing an application for a licence or for renewal stand to be assessed in terms of their potential impact against the prospective risk of alcohol related harm.

The statutory provisions must be applied in a way that promotes the two statutory objects which are that the sale, supply and consumption of alcohol be undertaken safely and responsibly and that the alcohol related harm should be minimised."

Mr Riches highlighted the term "potential impact" and "prospective risk" and submitted that the Committee is in a position to assess that as against the past three years of operation of the Off-Licence.

[11] As to suitability, Mr Riches submitted that the Applicant has provided a detailed Brief of Evidence. It has operated the store since 2018 with the support of capable staff. He said much of the objection was based on the area being supposedly subject to a high level of deprivation. This was not accepted by the Applicant, which says it is clearly a mixed area.

[12] Although Mr Trivedi is also engaged in other employment, he attends the store on numerous nights of the week and employs very experienced staff. There was no suggestion from any Agency or objector that the business had been operated in a manner which has caused any specific instance of alcohol-related harm or breach of the Act. Mr Riches submitted the Applicant is entirely suitable to be granted this renewal. He also submitted that the amenity and good order of the locality would not be enhanced by the decline of this renewal.

³ [2018] NZHC 1123, [2018] NZAR 882 at paras 43 and 45.

[13] Mr Riches pointed to matters that had been raised in opposition, such as: staff training; single sales; and the nature of the store. He submitted that the Applicant had taken a number of steps to deal with these issues prior to the hearing. The Applicant had engaged professional assistance with staff training. He introduced a policy in May 2022 restricting single sales to those of higher end alcohol with a price point introduced. The policy includes no single sales of RTDs, including Nitro. The Applicant planned to upgrade the building itself, by repainting it in more subtle colouring and generally upgrading its appearance. A mock-up for the proposed redecoration was provided to parties before the hearing.

[14] Mr Riches referred to evidence to be called from the Principal of Avonside Girls High School, Ms Catherine Law, and in particular a recent survey reporting high levels of sexual harassment against female students. He noted that report had been written by Dr Liz Gordon. Mr Riches highlighted that Dr Gordon had helped prepare the briefs of evidence for Mrs Diane Messenger, an objector, and for Ms Law, who was her witness. Additionally, he noted that the study had not been provided and there was nothing in the evidence linking the alleged offending to the Applicant's premises or alcohol generally.

[15] Mr Riches submitted that the Committee could be encouraged by the lack of opposition from the reporting agencies and lack of any specifics in the evidence of objectors. Finally, he argued that refusing this renewal would not raise the amenity and good order of the area.

Mr Deepkumar Trivedi

[16] Mr Trivedi on behalf of the Applicant sought a renewal of the Off-Licence. He briefly highlighted his experience in the industry, including his ownership of this business for the last four years. In addition, he works from home for Fujitsu doing IT work for approximately 37 hours per week. He works at Thirsty Liquor Burwood most nights of the week, either in the shop or training staff and dealing with administration work.

[17] The store currently opens at 11.00am and closes at 8.30pm from Sunday to Thursday and at 9.00pm on Fridays and Saturdays. Mr Trivedi would like the flexibility of the requested hours to provide a better service to his customers at busy times of the year.

[18] He noted Licensing Inspectors had visited on a regular basis and not raised any issues over the period of time he has owned the business. Whenever an Inspector gave advice

on improvements that could be made, either with the business or with staff training, he took that advice and acted on it.

[19] Mr Trivedi gave evidence of he and a partner applying for the grant of a Licence to operate an Off-Licence at 420 Colombo Street, Christchurch. Following a hearing by this Committee, that Licence was granted, but is subject to an appeal at the Alcohol Regulatory and Licensing Authority ('**ARLA**'). At the time of that hearing, he said he had hoped to operate the two stores under a new franchise. He was not happy with the look of the Thirsty Liquor Burwood premises when he purchased it but had been waiting to update the store in conjunction with the Colombo Street one. However, now, because of the appeal and also because he can no longer get an agreement with his preferred franchise due to others being located in close proximity, he has decided to redecorate the Burwood store under the existing Thirsty Liquor branding.

[20] The decision on the Colombo Street premises had contained some criticisms of rostering and staff training documents provided by Mr Trivedi relating to the Burwood store. In evidence at this hearing, Mr Trivedi provided documentation to show that he had engaged the services of Alcohol Consulting Group (**ACG**) to assist him in implementing staff training. He produced the ACG training manual, which he now uses to provide better training for all his staff.

[21] A number of matters raised by the Objectors had been reviewed by Dr Trivedi prior to the hearing. The predominant matters were:

- (a) the look and bright orange colour of the store which was perceived as a beacon highlighting consumption of alcohol;
- (b) the perception that the Applicant sold cheap alcohol in a deprived community which raised concerns about suitability. The Committee received evidence that five months ago Mr Trivedi made a decision that no single sales would be made under \$6.00 per unit;
- (c) the number of sensitive sites in the vicinity including schools, parks, social housing and churches; and
- (d) a perception that the combination of the above factors meant that the Object of the Act was not being met.

[22] Mr Trivedi gave evidence of a pamphlet being distributed in the area and produced a copy of it. It referred to the look of the store and described it as "the orange monster". It

encouraged residents to object to the renewal application, gave information as to how to object, and gave the address of Dr Gordon should further information be required.

[23] In cross-examination Mr Trivedi said he did not agree that the area was "severely" deprived. He stated that the premises was surrounded by areas considered Decile 9-10 and Decile 1-2⁴ almost in equal measure. He noted that houses in the Travis Country Estate subdivision were new and well-presented and that the primary school was new.

[24] In response to questions about the repaint of the building, Mr Trivedi said that the Thirsty Liquor brand dictates the colour of the store and they pay half the cost.

[25] Mr Trivedi accepted that he had not been keeping proper training records but had done so since this was brought to his attention some five to six months ago.

[26] In response to questions put by Mrs Messenger, Mr Trivedi said his customers were "good and respectable" people which he had found out from talking to them. He agreed there was some vandalism and graffiti in the area but this was not related particularly to his store. He explained his training records and the training he now undertakes with staff, including having them do online learning and knowledge tests. He confirmed there had been a robbery at the store in 2019.

[27] In response to questions from Dr Gordon, Mr Trivedi agreed that some school-age children would have to walk past his store to get the bus to school. He agreed that statistics showed there were two blocks of homes adjacent to the premises which were designation decile 9 on the deprivation index but pointed out that in the other direction from the premises there were homes designated as Decile 1 to 2. He answered further questions as to his own training and that provided for staff. He also provided answers to questions about prices, stating that he did not sell single units under \$6.00 and nor did he sell Nitro.

[28] In respect to questions from the Committee Mr Trivedi said he complied with policy in terms of everyday practice in the running of his business and his expectations of staff. He confirmed he had an experienced Duty Manager who ran the business during the day and he was at the premises most nights, particularly on the busy nights of Thursday to Saturday.

⁴ As identified by the New Zealand Index of Deprivation (NZDEP), <https://ehinz.ac.nz/indicators/population-vulnerability/socioeconomic-deprivation-profile/#new-zealand-index-of-deprivation-nzdep>

The Objectors

Mrs Dianne Messenger

[29] Mrs Messenger summarised her objection. She said she had lived in the area for 46 years, had a background as a community support worker and social worker and that she has volunteered in the community, working with families, for over 40 years. She was concerned about the present "look" of the premises, saying it "*stands on the corner as an invitation to purchase liquor*". She gave evidence of two armed robberies in the past three years, one at the subject premises in 2019 and the other at the pharmacy next door. She said the store was in a relatively highly deprived area and she felt the Applicant did little to undertake any plans he had to minimise harm in the area. She referred to some paragraphs of the Committee's decision on the 420 Colombo Street application insofar as they related to training and staff hours of work. She said she saw the store as "*a negative enabler in our community*" and "*the mere presence and accessibility of the store is a temptation hard to resist*".

[30] In response to questions, Mrs Messenger agreed that the more muted colours proposed for the store would present a much better image and she was pleased to see that the large sign had already been removed. She agreed that single sales with a set minimum price of \$6.00 was "*really positive*". She felt the amenity and pleasantness of the area had gone down following the earthquake with the locality now bordering the large red-zoned area of Christchurch. She responded to a question about the Applicant referring to the Travis Country Estate area as "posh" by saying it was new housing, but she would not regard those living in the area as "posh".

[31] Mrs Messenger agreed with a proposition put to her by a Committee member that there were global problems with alcohol and that the Applicant was representative of negative social activity. She said she would be happier with a renewal if there were conditions to be adhered to.

[32] In response to questions about the pamphlet that had been distributed in the area encouraging residents to object, Mrs Messenger said she had only become aware of it after she had lodged her objection. She said she did not know the objector, Mrs Gaylene Robb, but could not explain how the objection letters filed by Mrs Messenger, her husband, and Mrs Robb contained identical wording.

Ms Catherine Law – Witness for the Objector

[33] Ms Law gave evidence of being the Principal of Avonside Girls High School for the last year. She said 115 girls from the Burwood area attend the school, travelling by car, bus, bike or on foot each day. Many of them needing to pass Thirsty Liquor Burwood to get to school and return home.

[34] She spoke about a survey that had been conducted with 400 current students. Seven out of ten students who completed the survey noted that they had been sexually harassed. Over 500 incidences of sexual harassment were noted. The most common places for harassment were outside school, around town, out socialising and on public transport. Harassment at parties and social events usually involved consumption of alcohol. She pointed to the risks and consequences and said stores such as Thirsty Liquor Burwood normalised alcohol for students.

[35] In cross-examination, Ms Law agreed no incidents could be directly attributed to alcohol purchased at this particular store. In response to a question from the Chair, she advised she would be discussing with the Board the possibility of requesting the City Council to consider a Local Alcohol Policy ('LAP') for Christchurch and making submissions to Parliament on the proposed changes to the Sale and Supply of Alcohol Act.

Opening Submissions on behalf of Objector, Ms Joanne Pera

[36] Dr Gordon summarised her opening submissions. She submitted Ms Pera's evidence was in four parts which included that:

- (a) the deprivation and vulnerability of the area which met the legal criteria of 'extended suitability' established in the High Court in *Shady Lady Lighting*⁵ and at ARLA in both *Nekita Enterprises*⁶ and *Two Brothers Wholesale Limited*⁷;
- (b) the Applicant has failed to demonstrate it is suitable to the standard of extended suitability;
- (c) the look and feel of the shop being completely unsuitable for a small residential area and the huge advertising board for alcohol consumption; and,
- (d) the amenity and good order would be significantly improved if the store were to close.

⁵ *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100, [2019] NZAR 403

⁶ *Christchurch City Council Alcohol Licensing Inspector v Nekita Enterprises Limited* [2021] NZARLA 139

⁷ *Two Brothers Wholesale Limited v Medical Officer of Health, Waikato District Health Board*, [2021] NZARLA 32

[37] Dr Gordon highlighted the overall legal approach to be followed on renewals, particularly in vulnerable areas. She submitted a list of conditions which should be imposed if the licence were to be renewed, all relating to the look of the building and with the additional conditions that no single sales of beer or cider under \$6.00 be allowed.

Ms Joanne Pera

[38] Ms Pera was not sworn in as she noted that many of her objections had been addressed by the Applicant in its brief of evidence and by the evidence given at the hearing by Mr Trivedi. In particular, that the Applicant had introduced a single sales policy and that the large sign advertising alcohol had been removed from the building on the morning of the hearing, improving the look of the premises.

General Discussion

[39] At this point in the hearing the Committee saw the benefit in opening the hearing to general discussion around the look of the building and the proposed changes to it. Suggestions were made by the Inspector, the MOH Representative, the Committee, the Objectors, the Applicant and Counsel. This was a very constructive discussion which concluded with the Applicant agreeing to go and look further at his proposed changes to the exterior of the premises and produce further mock-up pictures incorporating many of the suggestions made.

Committee Visit to the Premises

[40] The Committee were joined by Mr Smeele, Hearings Advisor, and a representative of the Applicant at a visit to the premises on Thursday 10 November 2022 at 10.00am.

[41] The premises sits on the corner of an older block of shops with a chemist next door on one side and an empty premises that the Committee believes had been a café on the other. The Committee arrived early and found the area surrounding the block of shops to be tidy, with no rubbish and no noticeable graffiti.

[42] The building is in need of a repaint and the Committee agreed with the generally held view at the hearing that more subtle colours would be in keeping with the area, which is mainly residential. The inside of the premises was relatively clean and tidy but required some freshening of orange paintwork. The flooring also needs attention as worn patches could become a health and safety issue in the near future.

[43] There were no school-aged children in the area at the time of our visit.

[44] A walk along surrounding streets showed that most houses were older, mainly well-maintained, bungalows. Further away was a new housing area and, further still, a number of new post-earthquake schools. A drive past the Shirley Boys High School/Avonside Girls High School complex established that those schools were located some 2.5 km from the Burwood Thirsty Liquor, close to a block of shops containing a café and bar with seating outside

Closing submissions

Closing Submissions of the Objector

[45] Mrs Messenger, following the discussions at the hearing, continues to express concern about the advertising on the bottle store. She would prefer, as discussed, no Thirsty Liquor advertising on the windows and no advertising of beer and RTDs on the outside of the building.

[46] Similarly, Ms Pera, who did not give evidence but took place in the general discussion at the hearing, expresses concern about the look of the building. In addition, she reiterates that Committee should follow the decision in *St Joseph's School* in limiting sales of single beers and RTDs to \$6.00 per unit.

Closing Submissions of the Applicant

[47] Mr Riches reiterated his opening submissions. He said there was nothing heard in evidence that should convince the Committee that the Applicant is unsuitable to hold a licence. Over a period of several weeks he submitted a number of mock-up designs for the outside of the building.

[48] The Applicant has already put in place a policy for his store to ensure there would be no single sales of beer or cider under \$6.00 per unit. He agreed, in response to the submission of the Objectors, that the Committee should follow the decision in *St Joseph's School* in making it a condition of the licence that there be no sales of single beers, cider and RTDs to \$6.00 per unit.

Considerations of the Committee

[49] Having considered the application together with Agency Reports and objections placed before it and the oral evidence and submissions received, the Committee must now stand back and determine whether the application for renewal should be granted.

[50] The Committee notes the decision in *British Isles Inn Ltd* ARLA 406/2006, referred to by the Inspector, where the Authority stated:

“Although the onus is on the company to establish its suitability, there is a reasonably high threshold to be met by the objectors in order to displace the absence of concerns by the reporting agencies. We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an applicant is unsuitable”

[51] Those comments were directed to the issue of suitability and pre-date the present Act. While we accept they have some relevance to the matter of amenity and good order, the 2012 Act makes a specific provision for the Committee to form its own opinion on that subject. It provides criteria to assist it in doing so.

[52] It follows that the Committee cannot ignore public objections simply because the Agencies have not raised any opposition to the granting of the licence. However, we have to be able to identify facts that are directly relevant from the material presented. As ARLA said in *Smith v Kiwano*⁸:

“The decision of the DLC must be based upon some material that tends logically to show the existence of facts consistent with the finding and that the reasoning is supportive of the finding. The reasoning of the DLC and the inferences drawn from the facts, need to be logically available to the DLC.”

Evaluation and findings

[53] The Committee would first like to acknowledge the view of all parties that it would be greatly assisted by a Local Alcohol Policy, but Christchurch does not have the benefit of such a Plan.

⁸ [2016] NZARLA 497 at [51]; see also *Wilson v Durga Sai Holdings Limited* [2016] NZARLA PH 42 and *Kaiti Club Hotel* [2018] NZARLA 225

[54] This Licence was granted an Off-Licence following the purchase of an existing business in 2018. There were no public objections to that licence being granted.

[55] The Applicant is supported by the Police, the MoH and the Inspector confirming that no breaches or issues with the manner in which the Applicant runs the business have arisen in the last three years.

[56] The Committee refers to the application by GKD Limited for an Off-Licence for premises at 420 Colombo Street, Christchurch. Mr Trivedi, director of the Applicant, is also a director of GKD Limited. The application by GKD Limited was dealt with by this Committee and is currently subject to appeal at ARLA. In the course of that hearing, the Applicant referred to Thirsty Liquor Burwood to show evidence of experience in the industry and that one of its directors had operated a similar business with no issues. In the course of inspecting the documentation provided, the Committee was not entirely satisfied with the standard of staff training or the roster. The roster did not allow for statutory staff breaks in the day. There was no overlap in the start and finish times of shifts to allow for handovers that would include discussions about the previous shift and any issues that had been noted/entered in the Incident Register. Reference was also made by Objectors to the GKD application to cheap liquor being sold from the Thirsty Liquor Burwood Store. In their view, this raised the assumption that the same would be the case in the proposed Colombo Street business.

[57] The Committee is now satisfied with the evidence produced at the current hearing of the engagement of ACG to assist with the training of staff and the use of their training log to record staff training. Staff are given paid leave during their working day to undertake training. Mr Trivedi advised that the staff are now directed to close the store in order to take proper breaks in the day and there are overlaps in rostering to allow for constructive handovers. Further, in relation to the sale of cheap alcohol, the Applicant advised it had operated an updated policy on single sales since at least May 2022 in which no sales under \$6.00 are made of beer and no sales of RTDs including Nitro. Mr Trivedi consents to such a policy being a condition of his licence.

[58] The Committee notes the submissions on behalf of the Objector in relation to extended suitability and the cases referred to. In addressing those submissions, the Committee

evaluates the application in accordance with the 'process' articulated by Gendall J in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*⁹, namely that:

"... when the relevant body receives an application, they must consider it against s 105 in deciding 'whether to issue a licence". There is no presumptive position, and certainly no foregone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

So, in my view, the position can be summarized as follows:

(a) The role of the relevant body upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination on the application.

(b) In considering the application, the relevant body is fundamentally required to assess whether a licence ought to issue. In so doing, it must:

(i) consider any objections made by persons who have a greater interest in the application than the public generally;

(ii) consider any opposition filed by the constable in charge of the Police station nearest to where the application is filed, a Licensing Inspector and the Medical Officer of Health;

(iii) have regard to the criteria stipulated in s 105 of the Act ...; and

(c) The relevant body must finally cross-check whether the application is capable of meeting the object of the Act..."

Criteria for issue of licences - s105

[59] In its deliberations the Committee has been mindful of the Purpose and the Object of the Act. It has evaluated the application against each of the criteria in s.105 (a) to (g), (j) and (k).

[60] Considering whether the Applicant is a suitable entity to hold a Licence, the Committee notes that it has held a Licence since 2018 with no objections until this renewal. There were four objections, two from one household, and one letter in support of the business which stated that the Licensee provided a good service and that the staff were helpful and pleasant in dealing with customers. This, despite an extensive pamphlet drop in the area encouraging residents to make objections and providing contact information for Dr Gordon's assistance in making them. Three objection letters had exactly the same wording, despite Mrs Messenger stating she and her husband did not know the other

⁹ [2015] NZHC 2749 at [55] and [56]

objector. She said that objection had not been written by Dr Gordon and she could not recall receiving assistance. The Committee accepts that evidence it sighted, being an email to objectors with Paul McMahon's (who works with Communities Against Alcohol Harm) name on it, suggests he gave the wording for those objections.

[61] The Committee is not commenting on the action taken in distributing the opposition pamphlets except to say that despite this concentrated pamphlet drop, there was very little reaction to it from the local community.

[62] The Committee, in evaluating the evidence presented at the hearing, found no evidence to suggest that the Applicant is no longer suitable, having operated for three years without incident. The Committee notes that in his evidence at paragraph 7, Mr Trivedi said he saw the store advertised on TradeMe and had been "*wanting to start my own business*". The Committee's view of that statement is that Mr Trivedi wanted to build a business of his own and would work within that business. That is not the case. Mr Trivedi continues to work in the field of IT, although he does attend the store on a number of evenings. There is no requirement in the Act for the director of an Applicant to physically work in the business full time. We note that Mr Trivedi has employed a very experienced manager who, until recently, lived in the community surrounding the premises and was actively involved with the Community.

[63] The objector has raised the premise that the Applicant is unsuitable because it sells cheap alcohol and operates in a vulnerable and deprived area. The fact that the Applicant operates in a vulnerable and deprived area raises the threshold of suitability but does not, in itself, make an Applicant unsuitable provided the sale, supply and consumption of alcohol is undertaken safely and responsibly in furtherance of the dual objects of the Act.

[64] The Committee must consider the pool of evidence available to it against the criteria and the objects of the Act, and considering that adults in New Zealand should be able to enjoy alcohol in moderation, notwithstanding the harm that may result from excessive or inappropriate consumption. It is particularly noted here, that the Applicant's evidence showed that he is not selling cheap alcohol in comparison to many other bottle stores and neither does he stock products, such as Nitro, which are attractive to young people.

Amenity and Good Order

[65] All parties acknowledge that the locality immediately adjacent to the business in one of high deprivation (Decile 9). However, it is also acknowledged that there are considerable areas surrounding the locality that are new following the Christchurch earthquakes, with new schools and community facilities which sit much higher on the deprivation scale (Deciles 1 to 6).

[66] Counsel for the Objector pointed to Churchman J's comments in the High Court in *Shady Lady Lighting Ltd v Lower Hutt Liquormart Ltd* :¹⁰

“the vulnerability of an area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol-related harm”.

[67] That application was for a new Off-licence and was declined on the basis there were pockets of significant deprivation within the locality around Shady Lady's premises and some areas of vulnerability. Here, we are dealing with a renewal where the criteria under s131 is *“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”.*

[68] The Committee accepts the evidence of Ms Law, Principal of Avonside Girls High School, as to alcohol-related issues faced by schools, students and whanau and appreciates the difficulties schools face in relation to alcohol-related harm in their communities. However, there was no evidence that pointed to any issues at the school relating to the subject premises in particular, and indeed the school is situated almost next to another On/Off-Licence where students have been observed to congregate. The evidence did not establish that amenity and good order would be increased in any way if this particular application was declined. Further, the Off-Licence was operating for a considerable period of time and its existence would have been apparent at the time the decision was made to build the school on its new site, following the Christchurch earthquakes.

[69] The days and hours of trading are not excessive and, importantly, we note that the premises will not open until 10.00am after school starts in the morning. This, in itself, will help lessen the risk of exposure of children to alcohol.

¹⁰ [2018] NZARLA 198-199 at [127]. See also *Lower Hutt Liquormart Limited v Shady Lady Lighting Ltd* [2018] NZHC 3100 at [21].

[70] On the evidence before it the Committee were unable to reach a conclusion that amenity and good order would be increased by a refusal to renew.

[71] In terms of s128 of the Act, the Objector, mainly through her witnesses, did provide some valuable evidence to the Committee about the locality and the issues within it which were helpful in informing our decision.

Manner of Selling and Display

[72] The Applicant does not stock or sell products considered to be high risk for young people, such as Nitro. It is expected that restriction will continue.

[73] The Applicant is in the process of updating the look of the store both inside and out, with new paintwork and new flooring.

Undertakings & Conditions

[74] The Applicant has offered undertakings in terms of the pricing of single sales in an endeavour to address some of the concerns of the Objector The Applicant has agreed to these undertakings becoming conditions of the licence.

[75] The Applicant has agreed to update the premises by painting it inside and out, re-flooring, and restricting brand advertising on the outside of the premises. The Applicant has produced "mock-up" pictures of the upgrading of the building in an attachment to an email sent to the Committee Advisor, at 2.43pm on Tuesday 6 December 2022. The Committee approve the proposed colour schemes and window films to be used in the upgrade, as shown.

Other Considerations of the Committee

[76] In reaching its decision, the Committee notes the Object of the Act. The DLC has made assessments, based on the evidence before it and the various reports received, on each of the relevant criteria contained in s105 of the Act:

- ***The suitability of the applicant***

[77] We find that the Applicant is a suitable entity to hold a Licence. The director has been operating this business for approximately three years without incident.

- ***Any relevant local alcohol policy***

[78] There is no relevant LAP. Christchurch has the Christchurch Alcohol Action Plan (**CAAP**), a non-regulatory document. However, it is not a substitute for an LAP prepared under sub part 2 of the Act.

- ***The days on which and the hours during which the applicant proposes to sell alcohol***

[79] The Applicant seeks hours of 10.00am to 10.00pm 7 days a week. Those hours are within the national default hours for an Off-Licence of 7.00am to 11.00pm.

- ***The design and layout of any proposed premises***

[80] A plan was provided showing the proposed layout of the premises.

- ***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 and services:***

[81] The Applicant proposes to sell food items such as chips, nuts, packaged nibbles and fizzy drinks. The Applicant sells tobacco and vapes on request but these are not openly displayed.

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

[82] The DLC did not receive any evidence which would lead it to believe the amenity and good order of the locality would be increased by a refusal to grant the licence.

Decision

[83] Having regard to the matters in ss105, 106 and 131 of the Act as they relate to renewal of Off-Licences, together with the evidence and submissions of the Applicant, the Agencies and the objectors, we are satisfied that the grant of a renewal of licence for a period of **3 years** subject to the following conditions is consistent with the Object of the Act.

The Licensed Premises

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

Restricted and Supervised Areas - section 147(2)

- (b) The licensed area is designated as a supervised area.

Discretionary conditions – section 116 (1)

- (c) 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.

- (d) 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 and supplied within the area marked on the plan submitted with the application.

Compulsory conditions – section 116 (2)

- (e) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1.00pm on Anzac Day.

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

- (i) Monday to Saturday, between the hours of 10.00am and 8.00pm.**

- (g) Drinking water is to be freely available to customers, while alcohol is being supplied free as a sample on the premises.

Section 117 – Other Discretionary conditions

- (h) The following steps must be taken to promote the responsible consumption of alcohol:
 - (i) The licensee must implement and maintain the steps proposed in The Thirsty Liquor Burwood Host Responsibility Policy¹¹ aimed at promoting the reasonable consumption of alcohol.
- (i) The Licence is also subject to the following conditions, which in the DLC's opinion are not inconsistent with the Act:
 - (i) There are to be no single sales of beer, cider or spirits, including RTDs, priced at less than \$6.00 per unit.
 - (ii) There will be no sales of Nitro
 - (iii) No transactions will take place using Afterpay or similar payment methods.

Other restrictions and requirements

- (j) Section 56 – Display of signs
- (k) Section 57 – Display of licences
- (l) Section 59 – Requirements relating to remote sales by holders of off-licences.
- (m) Section 214 – Manager to be on duty at all times and responsible for compliance

[84] The licence shall be renewed for 3 years.

[85] 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 22nd day of December 2022

¹¹ Attached to the application



Merelyn Redstone
Chairperson
Christchurch District Licensing DLC