

Decision No. 022/OFF/05/2016

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by HB ENTERPRISES LIMITED pursuant to s. 122 of the Act for renewal of an OFF licence in respect of the premises situated at 33 JELICOE STREET, TE PUKE known as "THE BOTTLE O".

Before the Western Bay of Plenty District Licensing Committee

Hearing Date: 5 April 2016

Committee: Mr Michael Jones (Commissioner/Chair)
Mr Don Thwaites (Member/Councillor)
Mr Peter McKay (Member/Councillor)
Mr Jim Davison (Member)

Appearances: Mr Jaspal Singh (Applicant)
Mr Simranjit Singh (Applicant witness)
Mr Ron Burgess (Licensing inspector)
Sgt Nigel McGlone (NZ Police)
Ms Dawn Meertens (representing Medical Officer of Health)
Mr James Scarfe (representing Medical Officer of Health)

DECISION BEFORE THE WESTERN BAY OF PLENTY DISTRICT LICENSING COMMITTEE

1. The application for renewal of the existing off-licence is granted, subject to the conditions set out below. The Applicant may continue to sell and deliver alcohol for consumption off the premises, or to provide samples of alcohol to persons on the premises.
2. The licence will expire three years from the date of issue, being the maximum period allowable under the Act.
3. The renewed licence may be issued immediately.

CONDITIONS

The licence is subject to the following conditions:

1. Alcohol may be sold on or delivered from the premises for consumption off the premises, or supplied free as a sample for consumption on the premises, only on the following days and hours: Monday to Sunday 9:00am to 10:00pm



2. No alcohol is to be sold on or delivered from the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day.
3. While alcohol is being supplied free as a sample, water is to be provided to patrons free of charge at the place where the samples are being supplied.
4. A properly appointed certificated or acting or Temporary Manager must be on duty, at or nearby the point of sale, at all times when the premises are open for the sale and supply of alcohol.
5. The Licensee must display signage as follows:
 - a. At every point of sale detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. A copy of the licence attached to the inside of the premises so as to be easily read by people entering each principle entrance to the premises; and
 - c. A sign prominently displayed at the premises, which identifies by name the manager for the time being on duty.

BACKGROUND TO DECISION

The Committee must consider an application by H B Enterprises Limited (the Applicant) for renewal of an off-licence to sell and supply alcohol for premises which trade as a bottle store, under the trading name of The Bottle O.

All reporting agencies received copies of the application and duly provided reports on the renewal of the licence. The Medical Officer of Health opposed the licence application, as such the matter came before the Licensing Committee to consider by way of public hearing.

POSITION OF THE REPORTING AGENCIES

Inspectors Position

The Committee has received a detailed report on the application from Licensing Inspector Mr Burgess, and an addendum was tabled at the hearing. The report and addendum do not oppose the application. Evidence and cross examination at the hearing supported this position.

Medical Officer of Health Position

The Alcohol Regulatory Officer, Ms Meertens, attended the hearing and provided evidence and submissions, both orally and by way of a written brief in opposition to the application.

Opposition was on the basis of wider public health concerns, these included the sales of alcohol via single bottle sales and counter display of RTD "shots", safety concerns about the visibility of the premises internally from external to the premises based on CPTED principles, advertising of RTD products on the external windows of the premises targeting minors.

Ms Meertens advised there was concern that the applicant was targeting young people to buy and consume alcohol, for example in the window advertising where vodka cruisers and

Woodstock was being advertised, as that had particular appeal to minors. The Ministry of Health was aware that 14-17 year olds were attracted to "Ready to Drink" units (RTD's).

She advised that the Public Health sector was "at the top of the hill and not the bottom" and was trying to reduce harm from alcohol consumption.

Specific concerns relating to this premises were concerns that when customers visited the store they could buy a single alcohol serve for \$2. It was all about access to alcohol for people. Single sales were an issue for the Medical Officer of Health.

Ms Meertens had observed that people wanting to buy single serves at 11.00 am in the morning were not on shift work. These types of sales were typical of off-licenses and it was a national concern.

Ms Meertens said the Ministry of Health was trying to minimise alcohol related harm in the community.

Mr Scarfe provided research evidence in relation to health impacts of inappropriate promotion and sales, providing survey information supporting the Medical Officer of Health position.

In cross examination it was clarified that there was not specific evidence on harm from single sales in Te Puke, this information was not even available nationally. She also advised that there was no evidence that the applicant had never failed to operate as required. She was aware that if they did there were consequences such as suspension of the off-license.

NZ Police Position

Sergeant McGlone of the NZ Police provided a report that did not oppose the application. Sergeant McGlone responded to questions, his responses supported his position of no opposition.

APPLICANTS CASE

Applicant's submissions

Mr J Singh represented himself and gave evidence that he operated his store according to the requirements of the off-licence. There was no condition that single alcohol units could not be sold in the store, if there was a condition not to sell single alcohol units he would comply.

He did not advertise products as single alcohol units, and sales occurred due to having to divide a box up for sale due to breakages within a whole box of the product, so it could not be sold as a box unit and so he would sell the remainder of the product that way.

He had clear visibility from the store through the entranceway to the street.

He had reduced his hours of operation and was now closing at 10.00 pm instead of 11.00 pm to comply with the Tauranga and Western Bay of Plenty Local Alcohol Policy.

His staff knew their responsibilities regarding the law and the sale and supply of alcohol. They did not sell to under-age or intoxicated persons or in any illegal way.

There had never been a complaint about his business or the way it was run by any member of the public.

Mr S Singh provided response to questions regarding the operation supporting the evidence of Mr J Singh.

DISCUSSION

As indicated at the hearing, there are a number of matters which the Committee must determine. The primary issue to determine is whether the licence should be renewed. If the licence is to be renewed, then the Committee must determine the conditions which are to attach to the renewed licence.

The purpose of the Sale and Supply of Alcohol Act 2012 (the Act) is to put in place a system of control over the sale and supply of alcohol (s3). The object of the Act is to ensure that the sale and supply of alcohol is undertaken safely and responsibly and the harm caused by excessive or inappropriate consumption of alcohol is minimised (s4).

Renewal of the Licence

In deciding whether to renew the licence, the District Licensing Committee must have regard to the criteria in section 131, and various criteria found in section 105. This includes the following questions:

- a) Does the grant of the licence ensure the safe and responsible supply of alcohol and the minimisation of harm caused by excessive or inappropriate use of alcohol?
- b) Is the applicant suitable?
- c) Are the days and hours during which the applicant proposes to sell alcohol suitable?
- d) Is the design and layout of the premises suitable?
- e) Does the applicant propose to sell goods other than alcohol such as low-alcohol refreshments, non-alcoholic refreshments and food?
- f) Does the applicant propose to provide services other than those related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?
- g) Will the amenity and good order of the locality be increased by more than a minor extent by declining to renew the license?
- h) Does the applicant have appropriate systems, staff and training to comply with the law?
- i) Have the Police or Medical Officer of Health raised any concerns?
- j) The manner in which the applicant has sold or supplied alcohol under the previous licence.

In light of those criteria, The Committee are mindful that the following factors particularly support renewal of the application without additional restrictions or conditions:

- The applicant has experience in the licensing industry operating a number of outlets in Tauranga and has operated off-licences for a number of years, and therefore it can be accepted he is an experienced licensee.
- There was no specific evidence in relation to harm from single alcohol sales, and no specific evidence with regard to problems relating to this particular premises. The premises did not have a history of any issues of concern that had been brought to the attention of the Police or Chief Licensing Inspector, and there were no other agencies or parties that had indicated concern in relation to this premises.

- Based on the evidence presented, the Panel did not view the advertising as specifically targeting minors. The advertising was consistent with that used nation wide by the franchise.
- It was noted that the business had a social responsibility policy and there was no evidence this social responsibility was not being met.
- The Panel acknowledged that there were Close Circuit Television cameras (CCTV) visible and being monitored by store staff and considered that this was a deterrent to poor behaviour. It appeared that there was also adequate visibility through the premises front door during operating hours.

The Committee are satisfied that the considerations fall in favour of the application being granted. There is no evidence on the application file, which would suggest the applicant would sell or supply alcohol in any way contrary to the Act.

The committee considered that no additional conditions were necessary to the premises operation, there was no evidence that supported additional conditions to the applicants licence

CONCLUSION

Having regard to the relevant provisions of the Sale and Supply of Alcohol Act 2012, the Committee is satisfied that the existing off-licence should be renewed, pursuant to the conditions set out above.

We are satisfied as to the matters to which we must have regard as set out in s.131 of the Act. We renew the licence until 15 December 2018 that being the anniversary date of the licence and three years from the most recent date of expiry and authorise the issue of a replacement licence and a notice of a renewal certificate.

Dated at Tauranga on the 27th day of April 2016



Michael Jones
Commissioner

Western Bay of Plenty District Licensing Committee



Application: 6248