

Decision Number: 60F [2023] 14287

IN THE MATTER OF

the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF

an application by THE APOTHECARY LIMITED for an Off-Licence in respect of premises situated at 3/3 Garlands Road, Christchurch to be known as The Apothecary'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Mrs M Redstone JP  
Members: Mr G Clapp  
Ms L Shields

HEARING at CHRISTCHURCH on Wednesday 24 May 2023

APPEARANCES

Ms S Reddington – Applicant  
Mr D Joker – Licensing Inspector, to assist  
Miss P Williams – on behalf of the Medical Officer of Health, in opposition  
Dr C Brunton – Medical Officer of Health for Canterbury and the West Coast, in opposition

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RESERVED DECISION OF THE COMMITTEE

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INTRODUCTION

[1] This is an application by The Apothecary Limited ('the Applicant') for an Off-Licence. The premises is situated at 3/3 Garlands Road, Christchurch to be known as 'The Apothecary'. The application was received on 8 April 2022.

[2] The Applicant' sole director and shareholder is Ms Simone Reddington.

[3] The application states that the nature of the business is that of an herbal dispensary. The application was made under section 35 of the Sale and Supply of Alcohol Act 2012, as an exception for certain complementary sales. The Applicant has sought the following trading hours:

Monday to Sunday, between the hours of 8.00am and 9.00pm

(a) These hours are less than the default maximum trading hours for an Off-Licence.<sup>1</sup>

[4] The application drew opposition from one of the reporting agencies. The Medical Officer of Health ('MOH') opposed the application on the grounds that the sale of alcohol was *"not complementary to the current offering of The Apothecary, and that any health benefits derived from drinking red wine or alcohol containing botanicals are unlikely to be realised at safe levels of consumption"*.

[5] A pre-hearing conference was held on 16 March 2023 via audio-visual link for the Committee to gain an understanding of the reasons why the Applicant wished to include the sale of alcohol in her business. That conference was helpful and, following it, the Applicant advised the Inspectorate she wished to proceed with her application by way of a public hearing.

#### THE APPLICANT

[6] Ms Reddington submitted on behalf of the Applicant. In opening, she outlined her background of having obtained a Degree in Psychology and having worked in community mental health. She has also gained a Diploma in Herbal Medicine and a Bachelor in Natural Medicine. She outlined the background of The Apothecary and her wish to include herbal wines and botanical gins to the offerings of the business.

[7] In her brief of evidence, read at the hearing, Ms Reddington advised that her store primarily sells herbs - dried and in tinctures, capsules or tablets – and that is the reason for her store's existence. She stocks a range of foods, teas and coffees, supplements, perfumes, oils, and toiletries which have a common theme in that they all contain herbal/natural ingredients and are sourced locally. She said she provided herbs and other ingredients to Distilleries which showed complementarity.

[8] Ms Reddington said she was applying for the Special Category licence for several reasons:

- To supply home tincture and perfume makers with small amounts of grain alcohol to make their own tinctures and perfumes; and
- To stock a small range of:
  - New Zealand-made alcohols that are distilled with botanical ingredients including NZ native herbs;
  - herbal infused wines and liqueurs, aperitifs; and,
  - organically produced NZ wines.

[9] Ms Reddington stated that she worked in the field of health and has a herbal medicine practice where she advises on health matters. She holds clinics to assist clients with various health issues. She

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<sup>1</sup> Section 43 of the Sale and Supply of Alcohol Act.

believed that if she was able to stock alcohol it would put her *"in a better position to sell products that come with a health risk ... because this has the ability to reduce harm and educate our clientele"*.

[10] She said all her staff are trained in anatomy and physiology and pathophysiology and were acutely aware of the health risks of alcohol.

[11] Ms Reddington only intended to sell alcohol products which are at the higher price end of the alcohol market, including wines prices at over \$30 and spirits at over \$60. She said she believed alcohol harm *"comes from the sale of cheap alcohol"*. She would not be advertising her alcohol products as being beneficial.

[12] She advised *"our alcohol licence is strictly permitted to our opening hours"* noting the earliest opening time being 9:30am and the latest closing time being 5.30pm.

[13] The Applicant responded to questions, from Miss Williams for the MOH, the Inspector and the Committee. Ms Reddington was referred to her Host Responsibility Policy, submitted with the application, which ended with the words *"Now let's party"*. She was asked if that wording was appropriate. The Applicant advised that the Host Responsibility Policy was a work in progress and that wording had been removed from more recent versions of it. In answer to a question about complementary products, the Applicant pointed to several items which she sells that can be added to alcohol and also a range of tonics that contain alcohol. She further said that the common ingredient was the herbs. She responded to questions as to how alcohol fitted with her mission statement. She answered several questions relating to how she thought alcohol fitted with her philosophy on health and wellness and her adherence to the Naturopathic philosophy including *"us[ing] methods and medicinal substances which minimise the risk of harmful side effects"*.

[14] The Applicant accepted the proposition that a person would need to consume a great quantity of herbal wines, botanical spirits, or any other infused alcohol before they would gain any benefit. She accepted that the harm from the alcohol would far outweigh any benefit to be derived from it. She did not accept that the grant of a licence to her business would set a precedent for others as they would each have to go through the same process as she had gone through.

[15] The Applicant was asked how she would propose to deal with a supervised designation for her store. She seemed quite surprised at this and finally said that very few people under the age of 18 came into her store, and she would just have to accept that and deal with it on occasions when people under the age of 18 entered the store. This was not addressed in final submissions.

[16] Ms Reddington emphasised that alcohol was a legal product in New Zealand, and she believed herbal wines and botanical gins were a niche market. She emphasised that she was targeting customers

of the Tannery who were generally more wealthy and that she would not be marketing alcohol. She pointed to alcohol being sold in supermarkets where there are also instore pharmacies, and also to another Christchurch business, Piko Wholefoods, as being similar to her store and holding an alcohol licence.

#### THE MEDICAL OFFICER OF HEALTH

[17] Miss Williams appeared as the representative for the MOH in opposition to the application. The MOH opposed the application on the grounds that the sale of herbal wines, botanical gins, liqueurs and aperitifs would not complement the Applicant's current offerings and that any health benefits derived from drinking red wine or alcohol containing botanicals were unlikely to be realised at safe levels of consumption.

[18] Miss Williams referred the Committee to a number of cases and in summary said that, in her submission, the Applicant could not satisfy the Committee that an off-licence for complementary sales is appropriate. Therefore the provisions to be considered under section 105 are of no relevance. In Miss Williams' submission, wanting to stock alcohol to showcase other uses of herbs to a particular niche market was not sufficient reason to be granted a licence.

[19] Miss Williams called the Medical Officer of Health, Dr Cheryl Brunton, as a witness.

#### *Dr Cheryl Brunton*

[20] Dr Brunton outlined her background in medicine, and her role since 2003 as the Medical Officer of Health for Canterbury and the West Coast.

[21] Dr Brunton spoke to her report in opposition and then spoke to matters that arose as a result of the pre-hearing conference. She raised a number of matters in her report that the Applicant had already responded to in cross-examination at the hearing in respect of the benefits of botanicals and resveratrol. Dr Brunton also provided reference material to the Committee.

[22] As a result of the pre-hearing conference, Dr Brunton was concerned to hear the Applicant describe the potential for her and her staff to be "*educators regarding alcohol*" should she be granted a licence, as there was nothing to prevent them doing that as part of their existing business. She was concerned to hear the Applicant describe alcohol as "*an everyday extra like tea or coffee*", and that New Zealand-grown herbs in wine and gin could be seen as part of everyday life, where the botanicals are the benefit, not the alcohol.

[23] She was concerned that the Applicant, despite having undertaken training for a manager's certificate, demonstrated little to no understanding of what is considered a low-risk level of drinking and seemed unaware of the World Health Organisation deeming that there is no safe level of drinking.

[24] In Dr Brunton's view, Ms Reddington's responses to questions showed a naïve approach to both the rationale for her application for a licence to sell alcohol and her understanding of alcohol-related harm. She concluded by saying that, in her opinion, the sale of alcohol was not complementary to the current offering from The Apothecary and it could be deemed that the sale of alcohol products is completely inappropriate in a setting which offers "*health-related advice*" from "*qualified health professionals*".

[25] Dr Brunton answered a number of questions about how New Zealanders are educated on alcohol-related harm. When asked whether customers should be educated about the harms of alcohol at the point of sale, Dr Brunton said they should, but noted in the Applicant's business there was an opportunity to educate people without selling alcohol.

#### THE INSPECTOR

[26] Mr Dave Joker appeared for the Inspectorate to assist the Committee. His report was taken as read. He summarised the issues raised as to how health professionals would want to sell alcohol. In response to the Applicant's observation about pharmacies/health professionals operating from within supermarkets that sold alcohol, he explained that it was the supermarket that held the licence, not the pharmacy. He noted that Piko Wholefoods was a "grocery" within the meaning of the Act. With respect to the Applicant wishing to sell alcohol to those who make tinctures and perfumes, he pointed to section 9(1) which provided an exemption with respect to certain sales by health practitioners.

[27] In response to a question from the Committee, Mr Joker said that following this application being submitted and the Inspector reporting on it, there was some unease expressed in the Inspectorate at the lack of opposition. He suggested that if a similar application were to be received now, the stance of the Inspectorate may well be different.

#### FINAL SUBMISSIONS

##### *Medical Officer of Health*

[28] It is submitted that the MOH remains opposed to this application.

[29] It is further submitted that the link between herbs in wine is insufficient to prove that alcohol is complementary to the business as the product must be an appropriate complement and the position of the MOH is that it is not. With respect to "*setting a precedent*" the MOH point to the general principle in common law legal systems being that similar cases should be decided in a way that gives similar and predictable outcomes.

[30] Miss Williams referred to her opening submissions, and in particular the Liquor Licensing Authority's decision in *Re The Warehouse Limited*<sup>2</sup>:

*[58] At the outset of this decision, a number of principles need to be established. The first principle is that it is up to the company to satisfy us that the sale of liquor in its Albany store will be an appropriate complement to the kind of goods sold on the premises.*

and at para [9]

*[9] The company's basic contention was that anything that might be used on a social occasion should be included as items that would be complemented by the sale of liquor. But as can be seen, health and beauty products make up over 50% of the list. Such items could not possibly be included.*

and the Liquor Licensing Authority's decision in *Re Combined Rural Traders Society Limited* at para [50]<sup>3</sup>

*[50] We accept that the types of premises in which the sale of liquor would be an appropriate complement are limited. Three examples would be souvenir and tourist shops selling New Zealand made wine and the like, duty free shops and gift shops. In addition there are one or two large department stores that sell delicatessen items along with wine.*

[31] In summary, the MOH submitted that this application does not meet the criteria for a complementary licence and should be declined.

### *The Applicant*

[32] In final submissions the Applicant reiterated her experience and the purpose of her application. She submits that she requests the grant of an off-licence to enable her to offer only high-end New Zealand craft-distilled alcohols made with herbal ingredients, a small range of New Zealand organic-produced wine, and perfume and tincture grade alcohol in small quantities in what she describes as a niche market.

[33] Ms Reddington refers to the object of the Act and notes that the object is not to eliminate all risk of alcohol-related harm. She says that "*the Law Commission has identified values in alcohol consumption. ... As the Law Commission has noted, as a society, we have decided to tolerate its harmful effects because of the benefits many New Zealanders associate with moderate consumption*". She refers to supermarkets with instore pharmacies holding licences and submits these are in a similar position to her store where alcohol would sit alongside health-related activities and products, including some health foods.

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<sup>2</sup> *Re The Warehouse Limited*, LLA PH1673/2008, 2 December 2008

<sup>3</sup> *Re Combined Rural Traders Society Limited* LLA PH957/2008, 11 July 2008

[34] The Applicant submits that the fact that distillers come to her store to purchase herbs for their products proves complementarity to the kinds of alcohol she would be intending to sell, noting "[t]he distinguishing feature ... will be their herbal components, made by New Zealand producers. Therefore the 'kind' of goods sold at The Apothecary is best characterised as herbal goods. Plainly complementary to that would be the small range of herbal alcohol products that we propose to sell".

[35] The Applicant points to the "cheap alcohol at high volume" sold in supermarkets and alcohol stores leading to an increase in harm and notes that products proposed to be sold at The Apothecary would be of high value and would be sold in the least harmful way possible.

[36] The Applicant refers to the "unfortunate precedent" statement used by the MOH and submits that the granting of this application would not create a precedent. She submits that The Apothecary is not perceived as a health provider in the same sense as other medical or allied health professionals.

[37] The Applicant submits that:

- (a) she is a suitable person to sell alcohol;
- (b) alcohol is legal in New Zealand;
- (c) because the main focus of her store is that of an herbal dispensary, including selling herbs to distillers, proves complementarity in terms of section 35(b) of the Act; and,
- (d) a licence should issue.

## EVALUATION AND CONSIDERATIONS

[38] Having considered the application together with Agency reports and objections placed before it, and with the oral evidence and submissions received at the hearing, the Committee must now stand back and determine whether the application for a new Licence should be granted.

[39] The Committee first commends the Applicant on the way she conducted herself at the hearing and the professional manner in which she presented her evidence and her submissions. It is always difficult for lay people finding themselves having to present an application in an unfamiliar environment.

[40] The Committee accepts, on the advice given at the hearing by the Inspector, that with respect to wishing to sell alcohol to those who make tinctures and perfumes, section 9(1)(a) and (f) of the Act provides an exemption with respect to certain sales by health practitioners and the sale of "small quantities of grain alcohol" for use in tinctures and perfumes, as outlined in the Applicant's brief of evidence and her final submissions is permitted without the need for an Off-Licence. The first issue for resolution by the Committee is whether the application fits within Section 35(1)(a) and (b) of the Act.

[41] The Applicant submits that "[t]he Law Commission has identified values in alcohol consumption. Alcohol is a licit drug. The Law Commission has noted, as a society, we have decided to tolerate its harmful effects because of the benefits many New Zealanders associate with moderate consumption". This is from *Alcohol in our Lives: Curbing the Harm*<sup>4</sup>. While accepting this at face value, the Committee suggests it is naïve to conclude that because the Commission has accepted that "as a society we have decided to tolerate its harmful effects ..." this is a significant conclusion to be taken from a 587 page document focusing on alcohol-related harm.

[42] A decision in this application rests on the interpretation of section 35 of the Act. For clarity, that section is recorded here:

35 Exception for certain complementary sales

- (1) The licensing authority or licensing committee concerned may direct that an off-licence should be issued for premises not of a kind described in section 32(1) if it is satisfied that—
  - (a) the premises are a shop, but not a shop where the principal business carried on is the sale of food (whether food of a particular kind or kinds, or a range of food); and
  - (b) alcohol would be an appropriate complement to goods of the kind sold (or to be sold) in the shop."

[43] The business of the applicant fits section 35(1)(a) of the Act. Parliament, by using the word "and" at the end of that subsection, instructs Licensing Committees and Authorities to *also consider* whether alcohol would be an appropriate complement to the goods of the kind sold in the shop.

[44] The Applicant has told the Committee, and produced brochures in support, that its core business is that of a herbal dispensary. Its website, pages of which were produced as annexures to the application, is headed "*The Apothecary Christchurch | Science Based Herbal Medicine*". The information provided shows it sells items such as herbs, balms and salves, barks, berries, capsules, essential oils, evidence-based nutritional supplements, and a number of other products that fit within the theme of being naturally made from high quality ingredients.

[45] The Company mission statement reads as follows:

*"We are a team of passionate, qualified & registered Naturopaths, Medical Herbalists and assistants. Our mission is to create scientific awareness of herbal medicine, to building up a repository of herbal remedies that work through Research & Development to promote the use of herbal medicine in the community and help heal the human race" and "To integrate our services with allopathic medicine.*

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<sup>4</sup> New Zealand Law Commission, *Alcohol in Our Lives: Curbing the Harm, A Report on the Review of the Regulatory Framework for the Sale and Supply of Liquor*, 2010



[46] In the original application under the section "*kinds of alcohol to be sold*" it stated: "*Botanical and herbal alcohols, spirits, New Zealand made, craft boutique, small distilleries. Organic wines. These all relate to herbs and botanicals and provide some other benefit to the end user e.g., resveratrol in red wine*". However, at the hearing, the Applicant accepted that a great quantity of alcohol would need to be consumed to produce any benefit and, in fact, it would be well outweighed by the harmful effects of the alcohol.

[47] The applicant submits that "*[i]t is incorrect in principle for the Committee to accept that the type of shops would be limited from the outset, for example to souvenir and tourist shops, duty-free shops and gift shops, and department stores*". The Committee must consider decisions of higher Authorities when making decisions. It therefore takes note of statements made by the Authority/Court in cases such as those referred to in the MOH submissions.

[48] In *Re The Warehouse Limited*<sup>5</sup> the Liquor Licensing Authority stated "*[t]he first principle is that it is up to the company to satisfy us that the sale of liquor in its ... store will be an appropriate complement to the kind of goods sold on the premises*". Paragraph [10] of that decision reads "*[a]dopting a generous interpretation we found 574 items (10%), that could possibly be complemented by the sale of liquor.*"

[49] In the case before us, the Applicant did not provide any list of products and percentages sold. Ms Reddington was unable to provide any information about the percentage of overall sales attributable to the sale of herbs to distilleries and did not address this in closing submissions.

[50] We refer to *Re Combined Rural Traders Society Limited*<sup>6</sup> at paragraph [24]:

*"The Senior Constable maintained that the application was contrary to s 36(2)(b) of the Act, and that any interpretation linking alcohol to farm supplies was far too liberal. He had no concerns about the company's suitability. He suggested that Parliament had intended that food would be an appropriate complement to liquor. His concern was the effect of such a precedent. He argued that if the application was granted, liquor could be seen to be an appropriate complement to a wide range of products. He submitted that such a precedent would inevitably lead to an increase in the number of liquor outlets and consequential liquor abuse."*

## CONCLUSION & REASONS

[51] The Collins Concise Dictionary definition of "*complement*" is — "*[a] person or thing that completes something*". It is of interest that the third edition of the Collins English dictionary also refers to — "*One or two parts that make up a whole or complete each other*". The Shorter Oxford English Dictionary (sixth

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<sup>5</sup> *Re The Warehouse Limited*, LLA PH1673/2008, 2 December 2008

<sup>6</sup> *Re Combined Rural Traders Society Limited* LLA PH957/2008, 11 July 2008

edition) has seven suggestions of which “*a completing accessory*” seems to be the most relevant. The Concise Oxford Dictionary (ninth edition) suggests “*one of a pair or one of two things that go together*”.

[52] “*Appropriate*” is defined in the Shorter Oxford English Dictionary (third edition) as — “*especially suitable, proper, fitting*” and in the Concise Oxford Dictionary as — “*suitable or proper*”.

[53] Tompkins J in *Wine and Spirit Merchants of New Zealand Inc v James Gilmour and Co Limited*<sup>7</sup> said:

*“Subsection 2(b) is not an easy section to apply. Neither in the section nor elsewhere in the Act is the expression ‘an appropriate complement’ defined. In any application in reliance on that subsection there will need to be detailed evidence of the kind of goods sold on the premises. The Authority will need to decide, having regard to the meaning of that phrase, interpreted in the context of the section and the Act and in accordance with the purpose of the provision, whether, in the particular circumstances of the case, the sale of liquor was an appropriate complement to the kind of goods sold. Each case will need to be decided having regard to its own facts.”*

[54] Further, in *Re Combined Rural Traders Society Limited*, it is noted:

*“[Senior Constable Douglas Oliver’s] concern was the effect of such a precedent. He argued that if the application was granted, liquor could be seen to be an appropriate complement to a wide range of products. He submitted that such a precedent would inevitably lead to an increase in the number of liquor outlets and consequential liquor harm”<sup>8</sup>.*

[55] We accept that the types of premises in which the sale of liquor would be an appropriate complement are limited. The *Combined Rural Traders* decision suggested three examples would be: souvenir and tourist shops selling New Zealand-made wine and the like; duty-free shops; and, gift shops. In addition, there are one or two large department stores that sell delicatessen items along with wine.

[56] In the case before us the Applicant puts to the Committee that the sale of herbs and items containing botanical ingredients, and particularly the sale of herbs to distilleries, makes alcohol containing herbs or botanicals complementary to her business.

[57] The Committee finds that the Applicant’s business is primarily aimed at dispensing herbs for health reasons and running clinics by health professionals instore aimed at assisting people with diet and health issues.

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<sup>7</sup> *The Wine and Spirit Merchants of New Zealand Inc v James Gilmour and Co Limited* [1997] NZAR 134

<sup>8</sup> *Re Combined Rural Traders Society Limited* LLA Decision No PH957/2008, 11 July 2008, at para [24]

[58] A google search for the meaning of an Apothecary revealed the traditional concept of "*shops that sold ingredients and the medicines they prepared wholesale to other medical practitioners, as well as dispensing them to patients*". "*Herbalist*" is defined as "*someone to uses plants for healing*".

[59] Given the emphasis on health, healing, benefits of herbs and tinctures, and the mission statement of the Applicant, and accepting that herbs and botanicals are used in the production of some alcoholic wines and spirits, the Committee finds that the harmful effects of alcohol far outweigh any benefits.

[60] While it is accepted that Ms Reddington says The Apothecary is not a "health shop", to grant an Off-Licence to a store providing "*professional*" advice on health and selling primarily natural products while promoting their health benefits, would be to set a precedent by the Committee to be open to similar types of applications. It is noted here that in addition to the opposition by the MOH, Mr Joker said that although the Inspectorate had not opposed this application, having given further thought to it, any future similar applications would likely be opposed.

[61] The Committee refers to the 2009 New Zealand Law Commission Issues Paper, *Alcohol in our Lives*, where it is noted that:

*"alcohol beverages are items of consumption with many customary uses, and are also commodities important to many people's livelihood. But social customs and economic interests should not blind us to the fact that alcohol is a toxic substance. It has the potential to adversely affect nearly every organ and system in the body. Taking account of alcohol's potential for toxicity is therefore an important task for public health policy"*<sup>9</sup>.

[62] The Committee must ask itself does the inclusion of herbs outweigh the toxicity of alcohol in considering whether herbal and botanical alcohol products are *complementary* to an apothecary dispensing herbs and providing clinics to clients "*to promote the use of herbal medicine in the community*"?

[63] Following the findings of the Authority in cases referred to in this decision, the Committee is unable to accept that the inclusion of alcohol, albeit including distillation with herbs or botanicals, is an "*appropriate complement to goods of the kind sold in the shop*" or consistent with the Applicant's expressed mission statement and attention to health-related issues as recorded in its promotional material provided both to the Committee and to the general public.

[64] Having reached this decision, there is no need for the Committee to turn its mind to other sections of the Act.

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<sup>9</sup> New Zealand Law Commission, *Alcohol in Our Lives, An Issues Paper on the Reform of New Zealand's Liquor Laws*, July 2009, at page 42

DECISION

[65] Accordingly, having regard to the matters in section 35(1)(a) and (b) of the Act together with the evidence and submissions of the Applicant and the Agencies, the Committee declines the application.

DATED at CHRISTCHURCH this 22<sup>nd</sup> day of June 2023

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

Merelyn Redstone  
Chairperson  
Christchurch District Licensing Committee