

Decision Number: 60F [2024] 18108

IN THE MATTER OF

the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF

an application by **BARKSHIRE LIMITED** for renewal of an Off-Licence in respect of premises situated at 333 Harewood Road, Christchurch, known as '**LiquorLand Bishopdale**'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: **Mrs M Redstone**

Members: **Mr D Ivory**
Mr G Clapp

HEARING at CHRISTCHURCH on **Wednesday 21 August 2024**

APPEARANCES

Mr Zhigang Shu – representing directors and shareholders of Barkshire Limited - Applicant

Mr I Thain – Counsel for the Applicant

Ms A Ika (Social Policy Analyst and Advocate from the Salvation Army Social & Parliamentary Unit) – Objector

Dr L Gordon – Counsel for the Objector

Mr G Hay – Licensing Inspector – to assist

Ms L Bromley – Medical Officer of Health representative – to assist

S.C. G Jolliffe – NZ Police – to assist

RESERVED DECISION OF THE COMMITTEE

INTRODUCTION

[1] This is an application by **BARKSHIRE LIMITED** ('the Applicant' or 'Applicant Company' hereafter) for renewal of an Off-Licence in relation to premises situated at 333 Harewood Road, Christchurch, known as '**LiquorLand Bishopdale**'. The application was received by the Christchurch City Council Alcohol Licensing team on 22 November 2023.

[2] The Applicant Company has two directors and shareholders, Zhigang Shu and Rudie Zhang. Mr Zhigang Shu represented the Applicant at the hearing.

[3] The general nature of the business is that of a bottle store. The Applicant has sought the following

trading hours:

Monday to Sunday, between the hours of 8.00am and 10.00pm

These hours are less than the default national maximum trading hours for an Off-Licence.¹

[4] One public objection was received within the required timeframe.

[5] The application drew no opposition from the reporting agencies.

[6] The District Licensing Committee (**‘the Committee’**) members each undertook a visit to the locality to assess the surroundings prior to the hearing.

CRITERIA FOR RENEWAL

[7] In an application for renewal the Committee is required, pursuant to s131(1) of the Sale and Supply of Alcohol Act 2012 (**‘the Act’**), to have regard to:

- (a) the matters set out in paragraphs (a) to (g), (j) and (k) of s105(1);
- (b) whether ... 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 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.

MEETINGS BETWEEN APPLICANT AND OBJECTOR PRIOR TO HEARING

[8] Meetings had been held and emails exchanged prior to the hearing between the Applicant and the Objector (or her representatives). A number of agreements had been reached.

[9] The Objector did not object to the renewal or to the suitability of the Applicant.

[10] There were two points of difference on which the Applicant and the Objector could not reach agreement and those were the imposition of a single sales condition, and a restriction on external advertising.

[11] It was agreed between the parties at the commencement of the hearing that these were the only issues to be addressed at the hearing.

¹ Section 43 of the Sale and Supply of Alcohol Act.

OPENING SUBMISSIONS

[12] Counsel for both the Applicant and the Objector provided helpful opening submissions which were taken as read. Counsel spoke to those briefly, setting out the position of their clients.

THE APPLICANT

[13] On behalf of the Applicant Company, Mr Shu advised that he had listened to objectors and had made changes accordingly. In addition, he had offered to display Salvation Army brochures dealing with alcohol harm and to minimise external advertising.

[14] The Applicant called two witnesses, his Store Manager, Ms Hackney and the South Island Regional Operations Manager of Liquorland Limited, Mr Johnson.

[15] With respect to the imposition of a condition that there be no single sales of beer, RTDs or ciders smaller than 600ml and under \$6.00 per unit, Ms Hackney advised that Committee she had specifically asked customers about this practice when it was a much cheaper option to purchase a four or six pack. She said the response indicated that many of their clients were self-regulating in their consumption of alcohol and preferred to pick up one can on their way home as they said if they took home a greater quantity, they would consume a greater quantity. This view was supported by Mr Johnson who said this response was similar to that given in almost all stores where single units were sold.

[16] With respect to the 'data scrape' list produced by the Objector, Ms Hackney re-produced the list with their shop data record showing that of the 54 products only 18 were stocked by the Applicant with all, except two, being sold at \$5.99.

[17] With respect to the large 'poster' advertising outside the premises, Mr Shu advised that a decision was made during the Covid time, that in response to any general concern about the effect of Bottle Stores on the community, it would possibly reduce alcohol harm if the public could not easily see into the premises through quite large windows which provided a view of all alcohol displayed within the store area. A conscious decision was made that the posters would show products which would indicate that the store saw itself as one selling high end products, and this view was supported by the store sales figures as provided in the evidence of Mr Johnson. It was noted that the posters were not lit up at night.

[18] In response to questions, he noted that there was no pricing on the posters but advised that the products sold at over \$80 per unit and one upwards of \$100. He said the posters had not been put up to specifically attract custom, but rather so that those passing the store could not see into it. He did not consider that they attracted those either with an addiction or wishing to purchase cheaper alcohol.

THE TRI-AGENCIES

[19] There was no objection from the Agencies. The Police provided a helpful report of calls to incidents in the Bishopdale area where alcohol was a contributing factor.

[20] The Licensing Inspector, Mr Hay, provided information in respect of the Index of Multiple Deprivation ('IMD') produced by the University of Auckland's Faculty of Medical and Health Sciences. The Bishopdale area has an overall IMD ranking of Decile 5, with some pockets within close proximity to the store having a ranking of 8. This is in the context of a Decile 9-10 areas being considered the most deprived and Decile 1-2 areas being least deprived and acknowledging that the data used is from 2018. It was noted that relative to the rest of Christchurch City, the Harewood ward residents were living in less deprived areas overall, with 5% of the Ward's population living in the 'most deprived' areas compared with 14% for all of Christchurch City's population.

[21] The Inspector attached a Harewood Ward Profile to his report which showed that while there were some areas of high deprivation, generally the area was well served in terms of transport, business, recreational spaces, library, education and shopping malls.

THE OBJECTOR

[22] Ms Ika, the objector, is the Social Policy Analyst and Advocate from the Salvation Army Social & Parliamentary Unit and resides in Auckland. She had spoken with colleagues in Christchurch but had not, herself, visited or worked in the Bishopdale area.

[23] As stated above the objector did not object to the grant of the licence, or to the suitability of the applicant.

[24] The Objectors produced a comprehensive brief of evidence setting out how the Salvation Army seeks to reduce and minimise alcohol harm in New Zealand generally, as well as specifically in Christchurch, with a focus on the Bishopdale area. As at 12 August 2024 they have 86 active clients who live within 2km of this premises. The objector further pointed to the work being carried out by the Salvation Bridge Programme and the Committee acknowledges the work carried out by the programme in reducing alcohol-related harm.

[25] The Objector referred to the Christchurch DLC practice note indicating that "in appropriate cases, and especially where premises are situated in Alcohol Ban areas, or highly deprived areas" a condition of no single sales of beer, RTDs or ciders smaller than 600ml and under \$6.00 per unit, may be imposed.

[26] As noted under the heading 'Applicant', the Objector produced a list of 54 beer, RTDs and Cider products and prices which she said was a data scrape from Bishopdale LiquorLand. In her view it

covered a wide range of products being sold at relatively cheap prices. She accepted the Applicant's evidence as to the actual products from that list sold by the Applicant and the prices.

[27] The objector objected strongly to the three large alcohol advertisements outside the store, to which the Applicant responded with his view, as noted in his evidence above.

CLOSING SUBMISSIONS

[28] Counsel each gave oral closing submissions referring to a number of cases supporting their views on the issues to be addressed by the Committee.

EVALUATION AND FINDINGS

[29] The Committee must first have regard to the objects of the Act and in particular to minimising the harm caused by the excessive or inappropriate consumption of alcohol.

[30] The duty to “*have regard to*” under s131 of the Act requires that we turn our mind to the listed criteria. We are required to give them “*genuine attention and thought*”. The weight to be attached to each is a matter for us to decide.² In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123, Clark J summarised the applicable principles in respect of the renewal of a licence. He said at [43]:

“The factors to be considered in the course of assessing an application for a licence or for renewal, as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm”.

[31] The Committee must consider the criteria for renewal as set out in s131 and the provisions of the Act in relation to the conditions sought by the objectors.

[32] The Committee’s published practice note on single sales³ is an indication of conditions that may be imposed in highly deprived areas on a case-by-case basis. In this case, the Committee finds that the Applicant has taken a number of steps to address the issues raised both prior to, and at the hearing, including:

- keeping a daily whiteboard to which staff must have particular regard to address any issues with customers being either under-age, intoxicated, or attempting to purchase more than once in a day;
- range of stock having been considerably reduced, and prices increased to \$5.99 per unit, with the exception of Corona Extra (450ml) and Bavaria Holland (650ml) being priced at \$4.99 and both being under 5% ABV. These products will not be reduced in price or sold at a discounted price.
- Undertaking that products from broken manufacturer's packaging would not be sold as singles but would be reconstituted into packages of 4 or 6 units.

² *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC).

³ Christchurch District Licensing Committee, Practice Note 2 – Single Sales, <https://ccc.govt.nz/assets/Documents/Consents-and-Licences/business-licences-and-consents/Alcohol/Practice-notes/Practice-Note-Single-Serves.pdf>

- agreeing to no outward facing advertising of alcohol products displaying pricing, or specials.
- Increasing the number of low alcohol and zero alcohol products, including their promotion.
- Expressing a willingness to meet with members of the local businesses and community to address issues of amenity and good order generally, as well as alcohol-related harm.

[33] In addition, the Applicant has agreed to display Salvation Army Alcohol-related harm brochures and were actively giving them to anybody they thought may have any issues with alcohol or other social needs. The Applicant further offered to meet at any time with the Salvation Army or any other person or group to listen to ways in which it was considered alcohol harm could be reduced in the community. The applicant does financially support community initiatives and at least one sports team.

[34] Parliament has not changed the provisions of the Act which restrict the types of alcohol products legally sold in New Zealand. Nor has it introduced any controls on the price at which alcohol products can be sold. These matters remain for further review by the Government. Such a review, together with any advancement on the provision of a Local Alcohol Plan for Christchurch, would seem to the Committee to be the appropriate forums for Objectors to raise concerns about minimum pricing and single sales.

[35] The Committee accepts the evidence of the Applicant as to their pricing of single cans predominantly at \$5.99 which, irrespective of any pockets of deprivation found in the Bishopdale area, aligns with the DLC Committee's Practice Note as to single sales and pricing referred to in evidence.

[36] The Committee is inclined to follow the decision of the Dunedin District Licensing Committee in an application for renewal of an off-licence for a Pak’N’Save premises at 86 Hillside Road, Dunedin. The Committee declined to impose conditions sought and at [65] stated:

“... Such a condition would ‘force’ customers to purchase multi packs of alcohol which would allow them to consume several units of alcohol, if not the whole pack, compared with the single unit if the condition was not imposed”.

[37] As to s131(a), the Committee is satisfied that the Applicant carries out his business in a way that fulfils the requirements set out in paragraphs (a) to (g), (j) and (k) of section 105(1) and was impressed by the responsible attitude shown by Mr Shu and Ms Hackney in their response to reducing alcohol harm in the community. The Applicant has good staff training processes in place, and that was supported by the evidence of the Inspector and Mr Johnson who explained the strict requirements placed on LiquorLand franchisees by the franchisor.

[38] As to s131(1)(b), having read the reports of the reporting agencies, heard evidence as to reported alcohol harm in the area from the Police, and considered the two issues raised by the Objector. As stated above the Committee accepts the evidence as to pricing given by the applicant and accepts the

evidence of the applicant that the placement of the large alcohol posters was considered in that they were intended to decrease the public view of alcohol from outside the premises, while promoting the store as one which catered to the provision of alcohol to responsible drinkers. In the opinion of the Committee the amenity and good order of the locality would not be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence or the effects of imposing conditions as to single sales, pricing, or the public-facing advertising, except to the extent of confirming the undertakings that units of alcohol from broken packaging are re-packaged prior to sale, there would be no advertising on the bollards outside the store, and no outward facing advertising of cheap alcohol and specials.

[39] As to s.131(1)(c), there were no issues raised by the reporting Agencies.

[40] As to s131(1)(d) of the Act, having accepted that the Applicant has generally responded positively to the concerns raised by the objectors, the Committee is satisfied that the Applicant meets, or has taken action to meet, the requirements of this subsection. There is no advertising of specials on the outside of the store, it has good visibility in and out.

[41] The Committee is satisfied, based on the evidence presented, that the application for renewal should be granted for a period of **three (3) years**.

ADDITIONAL COMMENTS

[42] The Committee appreciates that it is often difficult for objectors to attend and express themselves at public hearings. It welcomes community input and thanks Ms Ika for her contribution to the hearing on behalf of her colleagues working in the Bishopdale community. The Committee acknowledges the work of the Salvation Army in addressing alcohol harm and other issues within communities across the whole country. It is hoped that hearings conducted under the new Community Participation legislation will assist in making the process easier for objectors to attend and bring evidence of their concerns to Licensing Committees.

[43] The Committee similarly acknowledges the difficulties faced by applicants in attending hearings where they feel they have to defend their businesses and their business practices. The Committee accepts that the applicant does not have an automatic right to have its licence renewed. However, the renewal process must be reasonable and strike a balance between addressing the harm without penalising responsible drinkers. This principle was recognised by the High Court in *Medical Officer of Health v Vaudrey & Bond*⁵.

⁵ [2016] 2 NZLR 382

[44] In the present case, since the last renewal of the Applicant's Off-Licence there has not been any material changes in the circumstances of the Applicant, or a change in the locality surrounding the premises, that would justify a refusal of the Application or the imposition of additional conditions over and above the undertakings agreed between the Applicant and the Objector, or given at the hearing.

[45] The Committee thanks the Applicant, the Objector and the Agencies for their valued input.

[46] A copy of the Licence setting out the conditions to which it is subject, is attached to this decision.

DATED at CHRISTCHURCH **this 30th day of August 2024**

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

Merelyn Redstone
Chairperson
Christchurch District Licensing Committee

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BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Mrs M Redstone
Committee Members: Mr D Ivory
Mr D Clapp

RENEWAL OF OFF-LICENCE

[1] This is an application by **BARKSHIRE LIMITED** ('the Applicant' or 'Applicant Company' hereafter) for renewal of an Off-Licence in relation to premises situated at 333 Harewood Road, Christchurch, known as '**LiquorLand Bishopdale**'. The application was received by the Christchurch City Council Alcohol Licensing team on 22 November 2023.¹

[2] The general nature of the premise is that of a **Bottle Store**.

[3] Following a hearing on 21 August 2024 the Licence was renewed for a period of three (3) years as set out in the decision of even date.

[4] Accordingly, pursuant to section 130(1) of the Act the Committee grants the application for a renewal of the Off-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.

¹ 60/OFF/113/2020

Section 119 – Restricted or supervised areas

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

Undertakings:

- (c) The Applicant had reached agreement as to undertakings with the Objector as follows:
 - (i) There will be no advertising on any bollards outside the premises;
 - (ii) There will be no outward facing advertising of alcohol products displaying pricing or 'specials'.
 - (iii) Any products from broken manufacturers packaging would not be sold as singles but would be reconstituted into packages of 4 or 6 units.
 - (iv) Beer, RTDs and Ciders sold as single units at a cost of \$5.99 will not be reduced in price or sold at any discounted price.

Discretionary conditions – section 116 (1)

- (d) 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.
- (e) 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)

- (f) No alcohol is to be sold or supplied on or from the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.
- (g) Alcohol may only be sold or delivered on the following days and during the following hours:
 - (i) **Monday to Sunday, between the hours 8:00am and 10:00pm.**

- (h) 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

- (i) 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 LiquorLand Host Responsibility Policy² aimed at promoting the reasonable consumption of alcohol.

Conditions applying to all remote sales and supply of alcohol

- (j) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on every receipt issued for any alcohol sold via the internet site.
 - (i) The licence holders name, the licence number, and the date on which the licence expires.
 - (ii) A copy of the licence or a clearly identified link to such image must be displayed in a prominent place on the internet site.
- (k) The following steps must be taken to verify that people are over the purchase age:
 - (i) In the case of an order made using an internet site, telephone order, or physical order –The prospective buyer must declare that he is she is 18 years of age or over (and where the prospective receiver is involved that the prospective receiver is also 18 years of age or over)-
 1. Once, when the prospective buyer first commences the order process; and
 2. Again, immediately before the sale of alcohol is completed

Other restrictions and requirements

- (l) Section 56 – Display of signs

² As attached to the application.

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

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

[6] 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 30th day of August 2024



Merelyn Redstone
Chairperson
Christchurch District Licensing Committee