

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Pristine Investments Limited for an On and Off Licence pursuant to s.127 of the Act in respect to premises situated at 15 West Coast Road Christchurch trading as the Yaldhurst Hotel.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE:

Chairman : Mr G B Buchanan
Members: Mr A J Lawn
Mr D Blackwell (QSM)

Hearing at the Christchurch City Council Chambers, CHRISTCHURCH on the 20th March 2015.

APPEARANCES

Ms J Davidson; Christchurch City Council Licensing Inspector
Senior Sergeant Spite (QSM) for NZ Police

APPLICANT

Pristine Investments Mr David Patrick McHugh
(Mr David Jackson as Solicitor)

Introduction

- (1) This decision relates to an application for the renewal of an On and Off licence under section 127 of the Sale and Supply of Alcohol Act 2012.
- (2) These applications relate to the premises situated at 15 West Coast Road, Christchurch, known as "the Yaldhurst Hotel". The premises have been the subject of a decision by Judge Hole in November 2013 regarding the reduction of trading hours and suspension of three days trading.

- (3) The premises are situated in an area on the outskirts of Christchurch city. The maximum number of occupants permitted on the premises is 357.
- (4) The Licensing Inspector and Police do not oppose the licence but seek a public hearing in order to traverse the concerns these agencies have regarding the ability of this applicant to operate his licensed premises within the law.

The Application

- (5) Mr McHugh is the applicant for the On and Off licences. He has been in the industry for a number of years and has held a Managers Certificate for 15 years. He is the sole shareholder of Pristine Investments Limited ("the company").
- (6) Mr McHugh acknowledged that there had been some problems with the management of the hotel in the past and said that they had since replaced the duty Manager and moved an assistant manager to the day shift, away from the more difficult evening shifts.
- (7) In 2013, he agreed to the reduction in trading hours after the Police made an application to suspend his licence.
- (8) In 2013 Mr McHugh took up an offer by the Licensing Inspector to assist to train the staff at the Yaldhurst Hotel. He also took up advice from the Police to engage a more professional security company to manage the busy evenings.
- (9) Mr McHugh said that large groups of patrons came out to the hotel after the Canterbury earthquakes because of the reduced number of licensed premises in town. He acknowledged that he was not prepared for this. Large groups of 'Party Buses' were also regularly making late evening stops at his premises.
- (10) He acknowledged that because his premises had a later closing time than other licensed premises in the vicinity, patrons often came into his hotel after others had closed.
- (14) Mr McHugh stated that he undertook monthly training for his staff. Most of which is conducted by the Manager and he often did not attend. Although he said that he had training policies and records he was unable to produce any of these at the hearing.
- (15) He acknowledged he has had problems with the 'party buses' arriving late with intoxicated persons on board. He told the committee that he had recently written to the two main operators telling them that they were not to come to his premises any longer.
- (16) Mr McHugh advised the committee that he currently has only small numbers of patrons in the bars over the weekends. He agreed that the large lounge bar could now be used for functions and already had hired it out on that basis. He also agreed that numbers of patrons would increase .

(17) When asked if the implementation of a one way door policy at 1am would assist to reduce the risk of intoxicated persons arriving late in the evening, he agreed that it would. He said that he would agree to such a condition if required.

Reporting Agencies

The Licensing Inspector

(18) The Inspector's report had previously been supplied to the committee.

(19) Ms Davidson made submissions to the committee which outline her concerns regarding the management of the hotel.

(20) Concerning the operation of the hotel, the licencing Inspector made the point that

"this matter needs to be determined in the context of the past incidents of alcohol related harm..."

(21) Despite the issue of intoxicated persons on the premises previously in 2011, which resulted in the suspension of the licence, further incidents of intoxication have occurred.

(22) The object of the Act is now "minimisation of Alcohol related harm, not merely its reduction". The suitability of the applicant must come into question when intoxication continues to be an issue for this applicant.

(23) Ms Davidson pointed out to the committee that only brief documentation was presented concerning policies and none relating to systems or training.

(24) The one policy presented to the committee was very brief and quoted the previous legislation, the former 'Sale of Liquor Act' .

(25) Ms Davidson submitted that this applicant was reacting to circumstances and events, rather than having a robust plan and policies to deal with the new Act and the operation of his premises in the current environment.

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"the overall standard of suitability of the holder of an on-licence is higher than the standard for the holder of a general Managers certificate ... ultimate responsibility remains with the licensee."

(26) As the licensee Mr McHugh has responsibility to ensure that his Managers and staff are well lead and well trained to operate his premises within the framework of the Act. No evidence was given as to how this was going to be achieved.

(27) Ms Davidson identified that without solid systems in place the likelihood of the applicant being able to operate the business within the framework of the Act was remote.

Police

(28) Senior Sergeant Spite did not object to these applications for an On and Off licence . He submitted that the Police had objected earlier, but this had been withdrawn after a period of 5 months had passed without further incidents of intoxication or offences against the Act.

(29) In the Police submission the 'nub' of the matter for this applicant was the lack of solid management systems and processes to ensure the business complies with the Act. He asked that tangible evidence be provided to the committee that these things have been addressed.

Decision

(30) All the evidence presented to the committee was considered.

(31) The application was duly advertised and no public objection or notice of desire to be heard has been received.

(32) There were no objections from the agencies regarding the suitability of the premises, although greater care needed to be taken with groups entering the premises from the various open doors.

(33) The premises at 15 West Coast Road are purpose built to conduct the business of selling alcohol.

(34) The opening hours sought for the licence are the same as those specified in the decision by Judge Hole in 2013.

(35) There is no LAP for Christchurch City .

(36) The committee makes the point that it is for the applicant to demonstrate that he is suitable to hold a licence. To do so he must satisfy the Committee that he meets the requirements of section 131 of the Act. We note that the Management of the Yaldhurst Hotel has been an issue previously.

' A liquor licence is a privilege. It may colloquially be regarded as a 'package deal'. Both the burden and the benefit runs with the licence. Mr Clark as a licensee must accept those burdens and control the sale and supply of liquor in a satisfactory manner, or he will not continue to enjoy the privilege. Either the licensee can manage the premises, and on-licence satisfactorily or he cannot.'

- (37) It would have been helpful to have had Mr McHugh produce documentary evidence of Policies and of training records to reassure the committee of their existence and quality.
- (38) No objections were raised by the agencies concerning the likely impact on good order in the vicinity.
- (39) The submissions from the agencies raised concerns as to the applicant's suitability. We note that the documentation completed by Mr McHugh in his application was very poor. Parts had to be sent back by the Licensing Inspector to be redone. The 'Host Responsibility Policy' submitted with the application was very poorly drafted and related to the former Act.
- (40) He was unable to produce any other documentation that one should expect to bring to such a hearing in support of an application.
- (41) Most of the action taken by the applicant relating to improvements to the operation of his business were suggested by the agencies. They were in 2013 and other than the replacement of the Manager, no other evidence was produced by the applicant as to what steps they were taking improve the operation of the business and its compliance with the Act.
- (42) The applicant, although very experienced, seems to have been overrun by the changes that have taken place in the licensing regime. He must catch up. The words of McGechan J are relevant. In *Buzz & Bear Limited v Woodroffe* [1996] NZAR 404 at 410 McGechan J said:
- "Times change. Communities and environments change. Social habits and levels of tolerance change. Obviously it would have been seen by the legislature to be wise to keep conditions imposed under review in light of potential social change. The licensee's submissions would have licence conditions frozen in some time warp while the world marches on; not, even in the arcane world of liquor licensing, a likely legislative intention....."*
- Any licensee takes a licence under the risk that conditions may change, and a report may recommend adjustment. There is no asset protected for all time whatever may happen inside."*

- (43) We note that Mr McHugh does have a manager's certificate, but has not undertaken the additional training to obtain a Licence Controller Bridging Test. He would benefit from doing so.
- (44) The applicant agrees to a 1am implementation of a one way door policy and the reduction of the licensed period to 18 months. He further agreed to work with the licensing Inspector to prepare documentation for; Training procedures, Alcohol risk management Policies and other relevant plans to assist him to meet his obligations under the Act.

Conclusion

We are satisfied as to the matters to which we must have regard as set out in s.131 of the Act and we grant the renewal of the licence for a period of 18 months from the date of this decision. The issue of the licence is subject to the applicant completing the required documentation to the Inspectors satisfaction within a 3 month period.

The applicant's attention is drawn to s.259 of the Act which makes it an offence to not comply with certain requirements and restrictions imposed by or under this Act. Specifically sections 46 to 63 and 231(1).

The applicant must comply with all conditions specified on the licence.

The licence will be subject to the following conditions:-

The licence may be issued on payment of the annual fee payable in accordance with regulation 15 of the Sale and Supply of Alcohol (fees) Regulations 2013.

Compulsory conditions – section 110 (2)

The following conditions are compulsory:

- (a) Alcohol may only be sold the following days and during the following hours:

Monday to Sunday 8.00 am to 2.00am the following day

No alcohol is sold on or supplied on the premises on Good Friday, Easter Sunday or Christmas Day, or before 1 pm on Anzac Day; and

- (b) water will be freely available to customers on the premises while the premises are open for business.

Discretionary conditions – section 110 (1)

- (a) 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:
- 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.
- (b) the following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
- Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.
- (c) the following steps must be taken to promote the responsible consumption of alcohol:
- The licensee must implement and maintain the steps proposed in their host responsibility policy aimed at promoting the reasonable consumption of alcohol.
- (d) Implementation of a one way door policy at 1am to prevent people being admitted entry into the licensed premises after this time.

Other restrictions and requirements

Section 50 – One-way door restrictions in local alcohol policies to be complied with.

Section 51 -- Non-alcoholic drinks to be available.

Section 52 – Low alcoholic drinks to be available.

Section 53 – Food to be available.

Section 54 – Help with information about transport to be available.

Section 56 – Display Signs.

Section 57 – Display of licences.

Section 214 – Manager to be on duty at all times and responsible for compliance.

All areas of the premises, including all outside areas are to be designated as a supervised area.



Mr G Buchanan
Chairman

Dated this 4th Day of April 2015