

## Decision No 60D [2017] 739

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

AND

IN THE MATTER of an application by PM  
Liquor Limited for a Off-  
Licence pursuant to s.99 of  
the Act in respect to  
premises situated at 76  
Riccarton Road,  
CHRISTCHURCH.

### **BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE:**

Chairman : Mr G B Buchanan  
Members: Mr A J Lawn  
Mr P Rogers

HEARING at the Christchurch City Council Chambers, Christchurch on 16 March 2017.

#### APPEARANCES

Mr M Ferguson; Christchurch City Council Licensing Inspector  
Sergeant J Harris for NZ Police  
Ms P Williams On Behalf of the Medical Officer of Health  
Mr M Mora on behalf of Halswell/Hornby/Riccarton Community Board  
Senior Constable Carter – Police Community Liaison Officer - Riccarton  
Mr T Simons on behalf of the Riccarton Bush/Kilmarnock Residents Association  
Ms E Ioannou on behalf of Straven Building Owners and Tenants  
Mr M Fuller  
Mr B Broughton  
Mrs H Broughton

#### APPLICANT

Mr L Minhas  
Mr J Taylor appearing for the Applicant

#### Introduction

- [1] This decision relates to an application for an Off Licence under section 99 of the Sale and Supply of Alcohol Act 2012 to operate an off-licence at 76 Riccarton Road, Christchurch.
- [2] The premises are currently a vacant shop and have not previously been licensed.

## Background

- [3] The applicant has owned and operated a number of Off Licences in the past few years. He currently has a applications for a bottle store at this location and at one other location in Christchurch.
- [4] The premises that the applicant wishes to operate at 76 Riccarton Road consists of a shop at the rear of a larger building which fronts onto Riccarton Road. The shop is some 100 meters from the road and access is down a wide access way. The alley has parking along its length, including four spaces for the applicant. Access can be obtained from both Straven Road and Riccarton Road. In effect a person can drive through from one road to the other. The amount of traffic using the road may make this difficult. The premises has no street frontage and is not easily visible from the Road.
- [5] There are a number of On and Off licences in this area. It has become an entertainment area later in the evenings with the number of restaurants and bars, the closest of which is immediately opposite in a separate building, some 10 metres away.
- [6] The Licensing Inspector does not object to this application. The Committee has received objections from both the Police and the Medical Officer of Health. The application also drew a number of objections from members of the public.
- [7] A hearing was set to determine the matter.

## The Application

- [8] Mr Minhas is the applicant for the licence. He was represented by Mr Taylor.
- [9] Mr Minhas' evidence was that he was one of two directors of the company that has run several off-licence premises mostly in Christchurch. He owns one business in Dunedin.
- [10] He said that they had issues with the duty manager in the Bottle-O store in Dunedin failing controlled purchase operations by the Police and for that reason he was selling the store. He felt that by operating stores only in Christchurch he was better able to keep an eye on things. He said that there was a system in place for each purchase to identify under age people. He said that he could no longer manage the store so was selling it.
- [11] Mr Minhas accepted that as the owner of the store he was responsible for ensuring it operated within the law.
- [12] The current application is for a location which has a large volume of traffic going past every day. It is in a commercial area amongst other shops and is adjacent to the Ministry of Development.
- [13] Mr Minhas said that he had read the objections from the public and their concerns raised. He said that he had considered his proximity to the Ministry of Social Development and earlier sought their view of him operating a bottle store beside them. In emails produced to the Committee, Mr Copeland, the Senior Property Manager for the Ministry said that "...it doesn't seem to be a problem". Mr Minhas said he thought that the proximity of the

schools was not particularly a problem, as he would not sell to anyone under 18, nor to any one in school uniform irrespective of their age.

- [14] He also gave evidence concerning his failure to file his annual company return, which he said was due to a confusion between the accountant and himself. He said that this had now been filed and produced correspondence to confirm this. He told the committee that he had also come to an arrangement with the Inland Revenue Department concerning an overdue IRD debt. He said that an arrangement had been agreed upon whereby the IRD would withdraw their notice to liquidate his company.
- [15] In response to issues from the objectors raised in their letters to the Licensing Team regarding people gathering in his carparking area or behind the adjacent shops, Mr Minhas did not think it would increase the problem. He said that by opening his bottle store and installing CCTV and lights in the area it might reduce the amount of people who might congregate there or meet there to preload. If people remained there he would call the Police or the security people from the adjacent bar, the Craic.
- [16] Mr Minhas said that he will not be a franchised shop, but also said in evidence said that he has been in talks with Bottle-O about using their franchise.
- [17] Mr Minhas told the committee that, together with his co-director he would be responsible for the training and employment of staff. They use Bottle-O as a basis for their training, procedures and guidelines. He produced a staff training manual to assist the committee.
- [18] In cross examination by Mr Ferguson, Mr Minhas said that he would not sell individual bottles, except craft beer, or items which were packaged in that way from the supplier. If necessary he would return opened or damaged packaging to the supplier, rather than package it up as a 'special' together with other opened products.
- [19] Sergeant Harris asked if the applicant was aware of the problems with youths around Riccarton. Mr Minhas said that he was but those problems were mainly around the bus exchange. He did not think that they would be a problem for him and that if they gathered by his premises he would ask them to move on or call the Police.
- [20] Sergeant Harris also asked if he was aware that people already gather behind the shops at this location to hang out and preload. The applicant said that he was, but if people were there he could call the security from the Craic next door.
- [21] He told the Sergeant that he had not looked at the data that the Police had supplied regarding alcohol offences in the immediate area.
- [22] Sergeant Harris asked Mr Minhas to explain the enforcement action that had been adjourned for the premises that he owns in Dunedin. Mr Minhas explained that they were very disappointed with the Managers there and had been let down. As a result of the failed Controlled Purchases he would sell this business and they would concentrate on running things in Christchurch.

- [23] Asked if they were selling the business instead of dealing with the problem Mr Minhas said yes. He said that the manager no longer works for them and that the managers were told that if they were to get a conviction they would no longer be able to work there.
- [24] He was asked if he had now sold the business. Mr Minhas said that the original sale had fallen through but he had a new buyer and was hopeful that that sale would proceed. They wanted to sell it because of the two CPOs and one selling to an intoxicated person. They couldn't control it from Christchurch. Asked if it would be difficult to sell with three Holdings pending, Mr Minhas said that it could be.
- [25] He was also asked if there was more than just the two offences for the Dunedin shop and stated that there was an earlier conviction for failing a controlled purchase.
- [26] Ms Williams on behalf of the Medical Officer of Health asked if Mr Minhas had done any observations around the vicinity of the premises. Mr Minhas said he had and that he hadn't seen much trouble. He said that the gate between the car parking and adjacent restaurant Buddha Sticks shuts around 11 pm.
- [27] Asked by Ms Williams what the arrangements were with the IRD, he said that they were required to file the overdue returns and make payment arrangements. He did not have any documents to show what arrangements had been made but IRD was no longer looking to liquidate the company.
- [28] Ms Williams asked why the application had not been completed in full in respect to question 8(h) in his application concerning businesses in the vicinity of the bottle store and if he thought there would be any impact. Mr Minhas did identify the businesses and said that he thought there would be no impact from him operating the store.
- [29] Mr Minhas, in answering a question concerning the use of CCTV, said that he would have cameras placed facing both to the rear of the carpark and towards the street. He would also have one facing a container he would have on site to store extra stuff he could not get into the store.
- [30] Ms Williams asked Mr Minhas to describe what he thought alcohol harm meant. He said that it was when someone lost consciousness, was aggressive or caused harm, or was caught drink driving.
- [31] Asked if his training document which he submitted to the Committee was from Bottle-O, Mr Minhas said that it was not and that it was his own. They had done a new manual after they were caught in Dunedin for the two CPOs. They had talked to the managers there and got them to do a questionnaire about serving minors.
- [32] The Committee asked Mr Minhas about the three breaches of the Act in the Dunedin store, specifically if he admitted to them on behalf of the company. He said that he did, that the employees admitted the offences, so obviously as a company director he had to admit them also.
- [33] Mr Lawn asked why he sought an adjournment for that hearing with ARLA. Mr Minhas responded that it was in order to sell the business.

[34] In response to a further question from Mr Lawn Mr Minhas said that he learnt to be more proactive after that. He talked to the employees and told them to do the 'test' about intoxication each month from the manual.

[35] Asked to describe how to identify an intoxicated person Mr Minhas said that the person smelt of alcohol, slurred his speech and was not able to have any self control. Asked if he had heard of the SCAB tool, he said that he had not.

#### Licensing Inspector

[36] The Inspector provided a written submission to the Committee and stated that together with his initial report it outlined his position regarding this application. He did not oppose this application. He did not give evidence.

#### Police

[37] Sergeant Harris explained that Ms Doak had prepared a brief of evidence and some research data which showed 'Alcohol related calls for assistance'. She was to have given evidence at this hearing but was unable to attend when the hearing was rescheduled, and her evidence was admitted by consent. Sergeant Harris was unable to assist the committee in interpreting the data.

[38] Senior Constable Carter, who is the Community Liaison Officer for Riccarton and University of Canterbury gave evidence.

[39] Senior Constable Carter said that there is an elevated level of minor crime in the area around the Riccarton shops being committed by brazen groups of youths. They gathered in areas around the Riccarton Mall, McDonalds, the Bus Exchange and in carparks behind businesses. They vary in age and many consume alcohol, which aggravates issues of offending.

[40] He said that he thought youths would gather around the bottle store as it was out of view from the road and passing Police. The availability of alcohol would be an attraction.

[41] The Constable explained to the Committee that the well-publicised issues of youth disorder at the Bus Exchange had not been fully resolved but had certainly reduced. This had, however, displaced the problem to other areas around Riccarton. The Council, responding to community concerns about the bus exchange, had removed comfortable seats to make it less attractive to remain there. When that didn't work they put in security people and that had helped. CCTV was already present but didn't make much of a difference. It was only when people were trespassed from there, that it improved.

[42] Mr Taylor asked if most of the youths were under 18 and if he accepted that alcohol could be purchased from other areas and bought into Riccarton. The Senior Constable agreed that most of the youths were under 18, but some were much older and that alcohol could always be purchased from other areas of the city.

[43] To questions from the Committee, Senior Constable Carter said that lighting and CCTV may make a difference to disorder if it is well directed and of good quality. He considered that the bottle store staff asking youths to move on would have little effect. This was shown by the experience at the bus exchange. It was only when people were trespassed that there was any effect.

[44] Mr Simons from the Riccarton Bush/Kilmarnock Residents Association asked why youths gather and if an additional bottle store would make any difference to the level of disorder. The constable said that in his view it would make things worse, not particularly with the younger groups, but with the older ones.

#### Canterbury Medical Officer of Health

[45] Ms Williams did not wish to give evidence and relied upon her reports previously submitted to the committee.

#### Community Objectors

##### Mr Fuller

[46] Mr Fuller gave evidence that he is the owner of the Craic Bar adjacent to the proposed bottle store. He told the committee that part of the regular duties of his staff was to clear up outside when they started work at 6.30am each morning. He said that several times each week they retrieve rubbish including emptied beer bottles, cans and broken glass. He said that by looking at that rubbish he knew that it was not products that he sold in his bar and was brought there by people gathering.

[47] Mr Fuller said that he had an entrance at the rear of the Bar which was accessed from the carpark and people often gathered around there. At times he did see people drinking and just hanging out. His security staff would try to move them away, but they didn't always know they were there. Police did patrol the alleyway.

[48] To a question from the Licensing Inspector Mr Fuller said that better lighting would improve the behaviour but some people were very brazen and it wouldn't make a difference to them. He said that he would not recommend that staff from the Bottle store ask people to move as that would place them at risk. His staff were trained to deal with this behaviour.

[49] The Committee asked if the applicant had spoken to him about security and the availability of Craic security staff to assist. He said that he had never spoken to the applicant.

##### Mr Broughton

[50] Mr Broughton is a local resident. He said he had little to add to his letter of objection. He said that disorder was still a problem for him as a resident and he saw examples of it with rubbish often thrown into his front yard. He said that more alcohol outlets would create more problems for Riccarton residents.

[51] The Licensing Inspector asked him if he knew that only three additional licenses had been approved since 2016. He said he did not know.

[52] Mr Taylor pointed out that young people can buy alcohol now, and asked what difference an additional outlet would make. Mr Broughton said more alcohol outlets would mean more alcohol being consumed and more potential for trouble.

Mrs Broughton

[53] Mrs Broughton also relied upon her written letter of objection. She also expressed concern about the proximity of the residential area behind the proposed outlet and thought that an 11pm closing time was too late and there was potential to have additional noise from this area.

Mr Simons

[54] Mr Simons is the Chairman of the Riccarton Bush/Kilmarnock Residents Association and after circulating information to the other members he wrote an objection on their behalf. Mr Simons also pointed out to the committee that because of the location there would be very little drive-in business. This was because of the difficulty in getting into and out of the premises. In his opinion it was a business set up predominantly for pedestrian customers.

Ms Ioannou

[55] Ms Ioannou represented the Straven Building Owners and Tenants. She relied upon her letter to the Committee but also told the hearing that it was very common for people to gather behind the shops already. This caused a nuisance for the tenants because of the mess, including people using the area as a toilet. The area was often damaged and tagged.

[56] In answer to questions from the Police Mrs Ioannou said that she felt that because the problem was already there, the area was already affected. She said it would only make things worse to have a bottle store there.

Submissions

[57] The Licensing Inspector presented oral submissions and reminded the Committee of the provisions of Section 105 and 106 of the Act. He submitted that granting a new Off licence for this area would not increase the amount of alcohol available and would not increase alcohol harm by more than a minor extent. The public has an expectation of reasonable access to alcohol and the Act looked for a minimisation of harm not elimination of it all together.

[58] Oral Submissions from the Police included the statement that the applicant was not a fit and proper person due to the three offences committed at his business in Dunedin.

- [59] Sergeant Harris submitted that evidence had been heard that there was considerable potential for a reduction of amenity and good order because of the activities of youths in the area and the location being hidden from view from the main road.
- [60] He also alluded to Section 105(1)(i) and submitted that in the evidence from Ms Ioannou the amenity and good order of the area could already be considered to be badly affected and the addition of an Off-licence would only make that worse.
- [61] Ms Williams asked to make a written submission the following day. With the consent of Mr Taylor that was granted. He made written submissions in reply to those.
- [62] Mr Taylor also made oral submissions to the committee. He said that the applicant had demonstrated how he was going to mitigate the possibility of people gathering or lingering in the vicinity of his bottle store. He said the amenity and good order would not be affected to anything more than a minimal extent. It might even be improved.
- [63] Mr Taylor submitted that his client intended to concentrate on his business in Christchurch so as to be able to manage and control his businesses.
- [64] He told the Committee that he accepted that there was one holding and depending upon the decision of ARLA, possibly two more of them to come in respect to the bottle store in Dunedin. He accepted that the two offences of selling to a minor and one of selling to an intoxicated person by the Managers of the Dunedin shop, were a factor in determining suitability of his client, but that the applicant had taken a responsible course of action by selling the business.
- [65] He also made further written submissions to the Committee addressing the submissions made by the Medical Officer of Health.



## Decision

[66] All evidence presented to the committee was considered.

[67] There is no Local Alcohol Policy in place for Christchurch City.

[68] In considering the application for an Off-Licence the committee must have regard to Section 105 and 106 of the Act.

### 105 Criteria for issue of licences

- (1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
  - (a) the object of this Act:
  - (b) the suitability of the applicant:
  - (c) any relevant local alcohol policy:
  - (d) the days on which and the hours during which the applicant proposes to sell alcohol:
  - (e) the design and layout of any proposed premises:
  - (f) 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:
  - (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:
  - (h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:
  - (i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—
    - (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
    - (ii) it is nevertheless desirable not to issue any further licences:
  - (j) whether the applicant has appropriate systems, staff, and training to comply with the law:
  - (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.
- (2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

[69] The first issue in this case is the suitability of the applicant because of the failures of the controlled purchases operations at the Dunedin bottle store and its sale to intoxicated persons. It is for the applicant to show the Committee that he is a suitable person to hold a licence to sell alcohol.

[70] An applicant for an Off-Licence must demonstrate suitability. A positive finding is required (see *Page v Police* 24/7/98 Panckhurst J, HC Christchurch, AP8498).

[71] The assessment of suitability involves a wide ranging enquiry. It includes considering an applicant's previous convictions, its character and reputation, and any matter raised in the reporting agencies reports, and any previous unlawful operation of premises, any breaches of undertaking and any misleading information (see *NZ Police V Casion Bar No.3 Ltd* HC WN CIV 2012485-1491 4 Feb 2013 by Dobson J)

- [72] The test in regard to suitability was set out in *Holland J in Re Sheard (1996)*<sup>1</sup> NZLR 751 at 755  
*"The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence."*
- [73] In this present case the applicant has failed to demonstrate his suitability to hold an Off-Licence.
- [74] Mr Minhas is the co-owner and director of the applicant company, PM Liquor Limited. P M Liquor is the owner of the Bottle store 'Bottle-O Princess Street' Dunedin.
- [75] At a hearing before ARLA on the 16<sup>th</sup> of May 2016 four enforcement applications were before the Authority in respect to these premises.
- [76] Three were in respect to two Managers working at these premises at the time and one for the cancellation or suspension of the existing Off-Licence.
- [77] The facts were that one manager failed a controlled purchase on the 17 of February 2016. He admitted the offence. A second Manager sold alcohol to intoxicated persons on the 23 July and failed a controlled purchase on the 16<sup>th</sup> of October 2015. He also admitted these offences.
- [78] ARLA heard these three matters in respect to the Managers. One manager had his licence suspended and the other manager, a renewal for his Managers Certificate was declined.
- [79] The application for the cancellation or suspension of the Off-Licence was adjourned by agreement while the applicant completed the sale of the business.

In that judgement *Paulin V PM Liquor (2016)* NZARLA PH 318-321 In Para 6 "*We are prepared to grant the adjournment. We note however that these allegations in respect of the two incidents on 23 July 2015 and October 2015 are the second and third incidents relating to these premises.*"

And in Para 8 "*If the current application had proceeded, resulting in further holdings, the three strikes provisions could have been triggered. Cancellation of the licence would have been a very real prospect in that case.*"

- [80] While further holdings have not been applied to PM Liquor, that remains a very real possibility unless they complete the pending sale. Mr Minhas himself admitted in evidence responsibility for the offences of his employees. It is right that he does so. It is likely some action will be taken by ARLA in respect to these offences.
- [81] There are difficulties in managing licensed premises from afar. We acknowledge that, but if those problems continue, then further action from the licensee is required. Mr Minhas said that he is selling the business because of these incidents. We accept this. He may be able to complete the sale of his Dunedin business before the upcoming ARLA hearing, but if not and ARLA cancels his licence there may be no business to sell. The motivation to sell now, and not 6 months ago when the last offence was committed becomes stronger

the closer to the possibility of a cancellation one gets. We do not accept that the only motivation in selling the business was to give the appearance of a responsible licensee.

[82] When considering the issue of suitability, the dicta in *Page v Police* (unreported High Court Christchurch) AP 84/98, 24 July 1998 per Panckhurst J is relevant:

*“Section 13(1)(a) provides that the applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding. That implies an onus on the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of the particular case: For example, the place, the intended business (here in a difficult central city location), the nature of the business itself, the hours of operation and the intended activities, provide the basis for the assessment of the individual.”*

Suitability is the foundation that any application must build upon. When the evidence regarding suitability is evaluated it is done so, not in a vacuum, but taking into account all the evidence available to the decision making body. In this case the location and amenity issues weigh heavily against the applicant in the light of the failures sustained in their Dunedin operation.

[83] The location of the bottle store is of some concern to the Committee. The store is set well back from the street and is hidden from public view. Evidence has been given that the areas behind some of the shops in Riccarton have become a place for young people to congregate. These people have been displaced from gathering at the bus exchange because of criminal activity and they now frequent areas less visible from the street.

[84] Groups of people already gather behind the shops adjacent to the proposed bottle store as there is an entrance to a Bar there. This is particularly so during the evenings.

[85] Vandalism is already occurring in this vicinity and there is a risk that the opening of a bottle store would make matters worse.

[86] The applicant has outlined a plan to improve security for the area, by the use of lighting and CCTV cameras. However, there still remains a considerable risk in this area and to control this risk requires an experienced operator with good systems and practices. Mr Minhas has not demonstrated such attributes.

[87] Also of some concern was the actions required by the IRD in respect to the applicant's failure to file a tax return just after he started his business. We do not know which year or years it applies to as he did not bring any supporting documentation to the hearing. Mr Minhas told the committee that there was a problem with getting all the information to the accountant, then she was away and then there were further problems with additional information required. It remains the responsibility of Mr Minhas to ensure that all such matters are attended to. They are a legal requirement and if he cannot be relied upon to ensure that these are completed it gives the committee some concern about complying with the requirements of the Sale and Supply of Alcohol Act. Compliance with legislative requirements is not optional.

In *Walden V Supreme Liquor Holdings Limited* (2014) NZARLA 81 (18 February 2014) The authority discussed similar circumstance involving the same directors in a company failing

to comply with its legislative requirements and their ability to form a new and separate company and restart the business.

*"There is a clear history of failure to comply with the law in the way these premises have been operated by these directors. The failures by Komal Enterprises Limited simply perpetuate the failures by the underlying licensee as both companies have the same people responsible for their conduct. The two companies are indistinguishable in terms of culpability."*

[88] The Committee finds on the evidence presented, that the applicant company is not suitable to hold an Off-Licence and the application is declined.

[89] Given our findings in terms of suitability it is not necessary to consider the other criteria.

### Conclusion

The Committee finds on the evidence presented, that the applicant company is not suitable to hold an Off-Licence and the application is declined.

A handwritten signature in blue ink, appearing to read 'G. Buchanan', with a long, sweeping underline.

Mr G Buchanan  
Chairman  
Christchurch District Licensing Committee