

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

A N D

IN THE MATTER

of an application from **POH HOLDINGS
LIMITED** pursuant to s127(2) of the Act
for the Renewal of an On-Licence
Decision 23/2015

BEFORE THE HOROWHENUA DISTRICT LICENSING COMMITTEE

Chairperson: Cr Ross Brannigan
Members: Mr Philip Comber
Mr Craig Fleury
Mr Allen Little, QSM, JP

HEARING at Levin on 10 March 2015.

APPEARANCES

- (a) Mr Kelvin Campbell, Cooper Campbell Law – Solicitor for the Applicant
- (b) Mr Carl Wackrow, Director, POH Holdings Limited – for the Applicant
- (c) Ms Marama Ngatai, Duty Manager – for the Applicant
- (d) Senior Sergeant Jeff Veale, NZ Police – in opposition
- (e) Constable Tracey Colville, NZ Police – in opposition
- (f) Constable Michael McKenzie, NZ Police – in opposition
- (g) Senior Constable Graeme Jarvis, NZ Police – in opposition
- (h) Constable Anthony Clarke, NZ Police – in opposition
- (i) Ms Lisa Roiri, Liquor Licensing Inspector – in opposition.

DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

- 1. This decision relates to an application by POH Holdings Limited for a renewal of an on-licence in respect of the premises trading as the Post Office Hotel, Foxton.
- 2. The application was filed on 25 September 2014, with the hearing held on 10 March 2015.
- 3. A renewal of licence is sought for seven days a week from 10.00 am to 1.00 am the following morning.

Reporting agencies

- 4. Both the Police and Liquor Licensing Inspector opposed the application on the basis that the applicant was unsuitable under s105(1)(b) of the Act.
- 5. The objection by the Police was based upon two incidents which had occurred in 2014. The first was a major disorder on 12 April 2014 where there were at least three breaches of the Act – intoxicated persons were permitted to remain on the premises; intoxicated persons were served; and disorderly conduct took place. The second was a dispute between the Applicant and the local Alcohol Harm Reduction Officer on 9 November 2014.

6. The Medical Officer of Health did not oppose the application subject to staff managing potentially intoxicated persons proactively at all times and all rubbish being contained outside the premises.
7. There is a safe and operable fire evacuation scheme.

Background

8. There has been a hotel operating from this site for many years under various licensees.

Evidence

9. Mr Campell appeared for the applicant, POH Holdings, and addressed a number of issues in his submissions, including the legal framework, the issue of suitability, and more broadly the reasons why the applicant meets the relevant thresholds for renewal of the on-licence.
10. In respect of the incidents relied on by the Police in opposing the suitability of the applicant, the Committee heard submissions and evidence to the effect that:
 - 10.1. The disorder on 12 April 2014 was in part contributed to (although unknowingly) by the actions of two Police constables endeavouring to enforce a liquor ban area outside the Hotel, by requiring a number of people on the street to get off the street and go inside the premises. As a consequence the Hotel was 'invaded' by persons who had been drinking at the nearby Rugby Club and who had in some cases entered by the fire escape door towards the rear of the Hotel. Both of those events were unanticipated and although the applicant offered to shut the Hotel he was advised by Police not to, so as to prevent further incidents on leaving the premises.
 - 10.2. The dispute on 9 November 2014 arose out of a misunderstanding as to whether the Applicant's car was parked on a public place or the Applicant's own land. The Applicant's car was parked in a manner which prevented the egress of a Council-owned vehicle in order to make a point about unauthorised use of his car park. The Committee was informed that the Applicant was acting on legal advice. A dispute arose when the Constable asked the Applicant to move his car and the Applicant was handcuffed (albeit briefly) in the back of a patrol car.
11. Ms Ngatai also gave evidence for the applicant. She has been employed as the Manager since April 2014 and since that time there have been no issues relating to the running of the hotel and the applicant has made it clear that she is the boss. The applicant who was in attendance at the hearing, did not dispute this.
12. The applicant, Mr Wackrow, also gave evidence, and accordingly Committee Members were able to ask a number of questions to allow them to form an opinion with regard to the applicant's suitability to hold a licence and meet the object and purpose of the Act.

Legal framework

13. The criteria the Committee must use in considering the renewal of the licence is set out in section 131 of the Act. These criteria largely repeat those in section 105, relating to the issue of new licences, including having regard to the objects of the Act as set out in s 4.
14. More particularly, the Committee must consider the following:
 - (a) the matters set out in section 105(1)(a) to (g), (j) and (k) of the Act;
 - (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 raised by reporting authorities; and
- (d) the manner in which the applicant has sold, displayed, advertised or promoted alcohol.

Committee's decision

Section 105 matters

15. The Committee has considered the object of the Act in reaching its decision on the application. It is satisfied that renewal of the on-licence would not result in unsafe or irresponsible sale or supply of alcohol or an increase in the harm envisaged by the Act.

16. *Suitability – s 105(1)b*

The Applicant has an impressive list of good works for the benefit of the public.

Further, after considering the evidence regarding the disorder on 12 April 2014, as well the fact there have been no repeat of that type (or similar) occurrence, the Committee is of the view that the applicant is suitable to hold an on-licence subject to the below conditions.

In reaching this view the Committee notes that the events of 12 April 2014 were not entirely of the Applicant's making, such that he was not wilfully ignoring his responsibilities under the Act. The Applicant, not unreasonably said that he followed the directions of the Police. He offered to shut the Hotel but the Police constables, for perfectly valid reasons, told him not to do so. Given this was a one off situation it is not considered sufficient evidence of the Applicant not being a suitable person to hold an on-licence.

The Applicant was acting on legal advice when parking his car on 9 November 2014. The actions of both the Applicant and the Constable appear to have run away from them. Again, the Committee is not persuaded this is sufficient evidence of the applicant's unsuitability.

17. *Any relevant Local Alcohol Policy – s105(1)(c)*

There is no Local Alcohol Policy in force for the area.

18. *The days upon which the Applicant proposes to open – s 105(1)(d)*

The hours proposed by the applicant are within the national maximum opening hours as set out in the Act, as well as the guidelines within the Horowhenua District Council's Sale of Liquor Policy 2006, and are considered reasonable.

19. *The design and layout of the premises – s105(1)(e)*

There is one issue of concern in respect of the design and layout of the premises. The location of a fire exit (which cannot by law be locked) out of the direct sight of staff at the bar area means that there is potential for the public to enter unnoticed by staff. People may well be intoxicated and use other patrons to buy their drinks. This appears to have occurred on 12 April 2014. A practical way to deal with this issue needs to be determined, but this alone is not a reason to decline the grant of a licence.

20. *Sale of other goods than alcohol and food – s 105(1)(f) & (g)*

There are no issues arising under this heading.

21. *Appropriate systems, staff and training – s105(1)(j)*

The Applicant has had the wisdom and the good fortune to engage a most experienced Manager in the person of Ms Ngatai. She was a most impressive witness and she will ensure that appropriate systems, staff and training are implemented on the premises. It is noted that Ms Ngatai has been in the role nearly 12 months and that during this time there have been no further incidents.

22. *Reporting authorities – section 105(1)(k)*

As noted in paragraphs 4 to 7.

23. *Amenity and good order*

There were no issues raised in respect of amenity or good order. There has been a hotel on this site in the CBD in Foxton for a great many years now, and there have been no known concerns relating to litter and the like. The question the Committee must answer is 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. Given that there have been no previous concerns relating to this matter, the Committee believe that the grant of a licence will not reduce the amenity and good order.

24. *Manner of sale*

No issues were raised with respect to how the applicant has sold, displayed, advertised, or promoted alcohol. Whilst there was an issue in April 2014, the Committee accepts that there were extenuating circumstances that applied at the time. There have been no incidents since.

Decision – renewal of licence

25. The Applicant has employed an experienced Manager, and there have been no further incidents since that of 12 April 2014. Further, any concerns in respect of the fire exit door and staff management of intoxicated persons will be met through the renewal period and an additional condition set out below. For these reasons the Committee is satisfied that the application meets the requirements, purpose and object of the Act.

26. Accordingly, the decision of the Committee is to re-new the On-Licence for a truncated period of twelve (12) months from 9 April 2015 until 8 April 2016, subject to the existing conditions and one further condition, being:

There must be some form of security on the doors, especially during events such as Karaoke nights to check on patrons' IDs and levels of intoxication.

27. The twelve (12) month renewal period will enable the applicant to address matters such as the fire door and ensuring that the policies that have been put in place by the Manager, Ms Ngatai, are 'bedded in' by the time the next application for renewal is received.

DATED at LEVIN this 9th day of April 2015.

R J Brannigan
Chairperson