

Decision No: **52/OFF/033/2014**
Record No: **15124251**

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Maurice John McQuillan for an off licence pursuant to s.100 of the Act in respect of premises situated at 5 Boyce Street, Blenheim, Marlborough District to be known as "Boyce Street Liquor"

BEFORE THE MARLBOROUGH DISTRICT LICENSING COMMITTEE

Chairman: Graeme Barsanti
Members: Hamish Beard, Margaret McHugh

HEARING at Blenheim on Tuesday 16 June 2015.

APPEARANCES

Miriam J Radich and Brittany Smith-Frank: acting for the applicant

Maurice J McQuillan: applicant

Karen Winter: Marlborough District Licensing Inspector

Objectors: Sarah Edmonds
Lorraine Sutherland
Heather Staples
Helen Marfell
Bernard Hadfield
John Russell

Introduction

The applicant seeks an off licence in respect of the premises situated at 5 Boyce Street, Blenheim to be known as "Boyce Street Liquor".

The application was received on 4 September 2014. The applicant was also required to go through a Resource Consent process.

The application for an off licence was duly advertised and 17 public objections were received. The six objectors above appeared at the hearing.

The criteria found in Section 105 of the Sale and Supply of Alcohol Act 2012 applied to this application.

There was no opposition from Police, Medical Officer of Health or the Licensing Inspector.

The proposed days and hours of opening are Sunday to Thursday 9.00 am to 8.00 pm, Friday and Saturday 9.00 am to 10.00 pm.

Location of the premises

The premises is located at the edge of a small group of shops comprising of two food premises, a veterinary clinic, a St John second hand shop and a garage manufacturer. The premise was previously operated as Hire Quip site and zoned Industrial 1 and adjacent to an urban residential zone 2.

The premise has been granted Resource Consent (U141003) on the 6 May 2015 to allow a liquor store to operate at this site. At least 12 parking spaces will be provided with potential for more at the rear of the site. The premises will operate a one-way traffic configuration with vehicle entry confined to the existing one-way driveway from Boyce Street existing via the existing one-way exit driveway onto Lakings Road. The floor plan shows the premises will be divided into approximately 1/3rd storage and 2/3rd shop front. The point of sale will be positioned at the shops entrance/exit from which the majority of the shop will be directly visible. The areas that are not visible will be able to be viewed through the use of CCTV.

Traffic issues were addressed in the applicant resource consent application. It was determined that the increase in traffic movements is not expected to have an effect that is more than minor as the roads are already rather busy. There will be the usual traffic noise of vehicles entering and exiting the property for purchase and delivery, but this will be no greater than the noise level produced by the previous Hirequip business.

Suitability of the applicant

Mr McQuillan has significant experience in operating licensed premises and currently operates "Grove Road Superliquor" which he has done for the past 25 years.

Applicant's systems, staff and training

All staff will be fully trained and made aware of all their responsibilities under the act. The applicant has proposed to put systems in place to ensure all the legislative requirements and responsibilities are fulfilled. These systems will include:

- Not supplying alcohol to a group unless all the individuals in the group are of legal age.
- Appropriate signage.
- And intoxication assessment tool
- Birth date checking procedures.

The store would have a "supervised designation" which is any person under the legal age (18 years) can only be present on the premises with their parent or legal guardian. This allows parent to take their children in with them and not leave them alone in the car.

Amenity and Good Order of Locality- Proliferation

Section 105(h) requires the district licensing committee to have regard to "*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*". In this regard s. 106 (1) requires the district licensing committee to have regard to the number of premises for which similar licences are held in the locality. There are two other off-licence premises and two on-licence premises in close proximity to this proposed licence. One of which is the Springlands Tavern which is 85 m away and the other is Countdown Springlands which is a walking distance of 554 m away.

There is to be no advertising on the outside of the building.

This is not to be a liquor discounter.

Objectors

Sarah Edmonds - resides at 5 Lakings Road

Mrs Edmonds was concerned about the number of liquor outlets in the suburb of Springlands, which is sufficiently serviced by existing outlets and what message is this sending to our children. Children have to walk past this outlet on the way to school. Mrs Edmonds was also concerned about safety at night; with a liquor outlet directly across the road from their residence. There is a potential for nuisance to neighbours, increased violence, vandalism to properties.

Lorraine Sutherland - resides at 15 Purkiss Street.

Mrs Sutherland said that granting of this licence would be against the District Plan. Springlands is already saturated with alcohol outlets. This is not good for the community, sending mixed messages to

our young people. Mrs Sutherland made reference to Council not having a LAP in place. Mrs Sutherland also tabled a written submission which included a statement that some of us took exception to.

Bernard Hadfield - resides at 14A Brook Street

Mr Hadfield was concerned about the noise and extra traffic. He also stated that there is no need for another liquor outlet in the area. Mr Hadfield also observed that the location is close to the Taylor River walkway and the liquor outlet will add to the rubbish already left there.

Heather Staples - resides at 232 Rapaura Road but works as a nanny at 5 Lakings Road

Ms Staples had concerns about the noise from vehicles, boy racers, the extra traffic from the new roundabout, the extra traffic at the Lakings Road intersection with Boyce Street and that this application would create more problems.

Helen Marfell - resides at 4A Nicol Street

Mrs Marfell spoke on concerns about further traffic problems, that another liquor outlet is not needed, and lots of college pupils use the streets around the proposed outlet area.

John Russell - resides at 22A Purkiss Street

Mr Russell was concerned about the proliferation of outlets and the effect of alcohol on the community.

District Licensing Committee's Comment, Decision and Reasons

The statute and case law are very specific as to the role of objectors. Only people who have a greater interest in the application than the public generally can object (s102(1) of the Act). They can only object in relation to one or more of the criteria set out in s105(1) of the Act (per s102(3) of the Act). If objectors fail to appear it is likely that their objection will have no value. If they do appear but fail to address the criteria set out in s105(1) of the Act their objection has little probative value (refer *Liquor World Limited NZLLA PH 1189/2009*).

The criteria as per s105(1) and s106(1) follows:

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.*

106 Considering effects of issue or renewal of licence on amenity and good order of locality

(1) *In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—*

- (a) *the following matters (as they relate to the locality):*

- (i) *current, and possible future, noise levels:*
- (ii) *current, and possible future, levels of nuisance and vandalism:*
- (iii) *the number of premises for which licences of the kind concerned are already held; and*
- (b) *the extent to which the following purposes are compatible:*
 - (i) *the purposes for which land near the premises concerned is used:*
 - (ii) *the purposes for which those premises will be used if the licence is issued.*

We considered that all the submitters that spoke at the hearing were entitled to under s102(1) of the Act.

However some of the matters raised by the objectors did not address the criteria for objections set out in s105(1) of the Act, with the exception of the issue of the number of alcohol outlets in Springlands, hours of operation (night) and noise. The issue of traffic and to a certain extent noise were covered in the Resource Consent process.

We considered s105(d) of the Act which requires the district licensing committee to have regard to "*the days on which and the hours during which the applicant proposes to sell alcohol*", and agreed that the hours were consistent with Council's current policy and the default national maximum trading hours as stated in the Act.

We considered s105(h) and s106(1) of the Act which requires the district licensing committee to have regard to "*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*", and agreed that the amenity and good order of the locality would only be reduced by a minor extent by the issue of this off-licence. We considered that the noise generated from the site would be no more than a number of other uses that the industrial zoning of this site would allow and that the applicant has advised that he is committed to ensuring noise levels are maintained within what is the permitted activity standard of the underlying Industrial Zone. We further considered that the level of nuisance and vandalism that may occur would also be no more than minor.

In regard to the number of licensed premises within the Springlands area, we considered that it should be noted that the industrial and commercial areas that provide retail space within the Springlands area, services a large area of Blenheim and is an area that is increasing with Council's drive to grow Blenheim in the north-west, and therefore the number of licensed premises with the addition of the applicant's within that area is acceptable.

We are satisfied that the application meets the criteria in terms of s105(1) (and 106(1)) of the Act. In our view granting the application will not be contrary to the purpose of the Act. The application is granted with hours of operation as follows:

Sunday to Thursday 9.00 am to 8.00 pm
 Friday and Saturday 9.00 am to 10.00 pm.

The licence will not issue until the expiry of 10 working days from the date of this decision. That period is the time provided by s155(1) of the Act for the lodging of a notice of appeal to the Alcohol Regulatory Licensing Authority (ARLA) in Wellington.

DATED at Blenheim this 26th day of June 2015



Secretary
 Marlborough District Licensing Committee

